# 2005 ANNUAL REPORT

## OF THE

# JOINT COMMITTEE ON ADMINISTRATIVE RULES

SUBMITTED TO THE
MEMBERS OF THE
ILLINOIS GENERAL
ASSEMBLY

2005
ANNUAL REPORT

of the

# JOINT COMMITTEE ON ADMINISTRATIVE RULES

*Submitted to the Members of the*
*Illinois General Assembly*



700 Stratton Building
Springfield IL 62706

# *JOINT COMMITTEE ON ADMINISTRATIVE RULES*

ILLINOIS GENERAL ASSEMBLY



700 STRATTON BUILDING
SPRINGFIELD, ILLINOIS 62706
217/785-2254



February 1, 2006

Honorable Members of the 94th General Assembly:

As Chairs of the Joint Committee on Administrative Rules, we hereby submit the 2005 Annual Report of that Committee. An overview of the Committee's rules review activities can be found in the following pages.

The Joint Committee on Administrative Rules gratefully acknowledges your continued support and assistance. We encourage all members of the General Assembly to take an active role in this vital oversight function guaranteeing that the public right to know is protected through an open rulemaking process. We welcome your suggestions and comments on agency rules and the role of the Committee. Only as each elected representative becomes concerned and involved in the oversight process can the Committee ensure that the intent of the legislation we pass is maintained.

Sincerely,

Maggie Crotty

Senator Maggie Crotty
Co-Chair

Representative Brent Hassert
Co-Chair

# JCAR Annual Report: 2005

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# JCAR Its Creation and Its Purpose

## Creation

The Illinois General Assembly created the Joint Committee on Administrative Rules (JCAR) in 1977 and delegated to it the responsibility of the legislative branch to ensure that the laws it enacts are appropriately implemented through administrative law. The specific duties and authorities of JCAR are outlined in the Illinois Administrative Procedure Act (IAPA), as is the Illinois rulemaking process.

## Responsibilities

The Committee's principal programs and activities include:

- *Review of general rulemaking.* In the course of this review, JCAR seeks to facilitate involvement by the affected public and to make the review process a timely and efficient one that assists State agencies in their goal of enacting the best administrative law possible.
- *Review of emergency and peremptory rulemakings* to ensure that they are justifiable within the IAPA's limitations on these types of rulemakings. Emergency and peremptory rulemakings are not subject to the IAPA's public comment period, and thus should be used conservatively.
- *Review of existing agency rules and policies* to determine if they have been properly promulgated, are unauthorized or unreasonable, or result in serious negative impact on the citizens of this State. These reviews can be undertaken upon JCAR's own initiative or in response to a complaint from the public.
- *Public Act review* to determine the necessity for new or amendatory rulemaking in response to legislative changes. JCAR devises a list of laws it believes may generate rulemaking activity, shares that list with the agencies, and monitors agency activity to determine if appropriate action is taken.
- *Legislative activities.* JCAR reviews any proposed legislation that amends the Illinois Administrative Procedure Act and brings to agencies' attention any resulting changes in rulemaking procedures. Legislation involving issues that have recently come before JCAR is also followed. Under its IAPA mandate to continually seek to improve the rulemaking process, JCAR occasionally initiates legislation revising the IAPA. It also may propose legislation when rules review brings attention to a statutory insufficiency or lack of clarity or to enforce its Objections or Recommendations when an agency has refused to adhere to those Objections or Recommendations.
- *Public information.* JCAR provides information on rules and the rulemaking process to legislators and the public through several conduits. First, JCAR publishes *The Flinn Report: Illinois Regulation*, a free weekly newsletter that summarizes State agency rulemaking activities. The newsletter is used by many as an alternative to subscribing ($290/yr.) to the *Illinois Register* and is available on-line, as well as by mail. The newsletter highlights the major issues; the reader can then seek a copy of the specific rulemaking or further information from the proposing agency. Second, JCAR has created and maintains the *Illinois*

*Administrative Code* database. The database is used in the publishing of the *Illinois Register* by the Secretary of State's Index Department. State agencies can request materials from the database for use in drafting amendatory rulemakings. The database is also accessible on the General Assembly website (www.ilga.gov). While emergency rules are not imbedded into the database, the database shows where emergency rules have been adopted and contains automatic links to the *Illinois Register* database, where the emergency rules can be viewed. Third, JCAR staff is always available to respond to inquiries from General Assembly members and the public. (For information, or to be added to the *Flinn Report* mailing list, call 217/785-2254 or contact JCAR by e-mail at jcar@ilga.gov.)

## The Review Process

The JCAR membership meets at least once each month to consider an agenda that generally includes from 50 to 100 separate rulemakings by State agencies. In a year's time, JCAR will review approximately 20,000 pages of rule. The IAPA dictates that the Committee's analysis of rulemakings be based on such concerns as statutory authority and legislative intent; necessity of the regulation; economic impact on State government and the affected public; completeness and appropriateness of standards to be relied upon in the exercise of agency discretion; effect on local government through the creation of a mandate; adherence to IAPA rulemaking requirements; and form.

JCAR's review of agency regulatory proposals is predominantly substantive. Its major concern is that statutory law is applied fairly and consistently, creating as little paperwork and economic burden for the affected public as possible. The Committee serves as the final avenue for input from the public before a rulemaking is formally adopted. Recommendations from the public are always welcome and are actively sought. The Committee recognizes that no one is as qualified to comment on the appropriateness and practicality of a proposed regulation as the individual whose activities or business practices will be affected by that regulation. Comment on any proposed or existing State regulation may be submitted to the Committee at 700 Stratton Building, Springfield IL 62706, or by calling 217/785-2254.

JCAR's perusal of agency rulemakings serves a technical purpose as well. The various rulemakings of the State agencies collectively comprise the *Illinois Administrative Code*. In giving a final technical review to each agency proposal, JCAR, along with the Secretary of State's Index Department, strives to achieve some degree of consistency among the individual agencies' portions of the *Code*, and to make the *Code* as readable and understandable for the public as possible.

## Annual Report

This Report includes narratives of JCAR activity during 2005, as well as the statistical summaries of the rulemaking activities of State agencies. The summary of legislation affecting JCAR reflects activity of the 1st year of the 94th GA. This Report also includes a historical overview of rulemaking, pertinent historical statistics, and the most recent version of the Illinois Administrative Procedure Act.

# JCAR MEMBERSHIP

The Joint Committee on Administrative Rules consists of 12 legislators who are appointed by the General Assembly leadership. Membership is equally apportioned between the 2 houses and the 2 political parties. Two Co-chairs are selected as provided by law. The Co-chairs are not members of the same house or the same party.

## 2005 MEMBERS

Senator Maggie Crotty, Co-Chair
Senator J. Bradley Burzynski
Senator James F. Clayborne, Jr.
Senator Steve Rauschenberger
Senator Dan Rutherford
Senator Ira Silverstein

Representative Brent Hassert, Co-Chair
Representative Tom Holbrook
Representative David Leitch
Representative Larry McKeon
Representative David Miller
Representative Rosemary Mulligan

## FORMER MEMBERS

Bill W. Balthis
Allen Bennett
Arthur L. Berman
Bill Black
Prescott E. Bloom
Glen L. Bower
Jack E. Bowers
Woods Bowman
John W. Countryman
Mary Lou Cowlishaw
Tom Cross
John Cullerton
Michael Curran
Richard M. Daley
Steve Davis
Vince Demuzio
Laura Donahue
James H. Donnewald
Thomas Dunn
Jim Edgar
Tom Ewing
Beverly Fawell
Monroe Flinn
Barbara Giolitto
James Gitz
Alan J. Greiman
Kenneth Hall
Charles Hartke
Karen Hasara
Carl E. Hawkinson
Larry Hicks
Manny Hoffmann
Emil Jones, Jr.
Jeremiah E. Joyce
Douglas N. Kane
Doris Karpiel
Richard Kelly, Jr.
Bob Kustra
Thaddeus "Ted" Lechowicz
Larry Leonard
Ellis Levin
Richard Luft
Lisa Madigan
John W. Maitland, Jr.
Lynn Martin
John M. Matejek
Roger McAuliffe
Thomas J. McCracken, Jr.
Sam McGrew
A. T. "Tom" McMaster
Jim Meyer
Phil Novak
Barack Obama
William O'Daniel
Myron J. Olson
Coy Pugh
Jim Rea
David J. Regner
Jim Reilly
Philip J. Rock
Tom Ryder
George Sangmeister
Frank D. Savickas
John Sharp
Todd Stroger
Art Tenhouse
Donne E. Trotter
Sam Vinson
Richard A. Walsh
Larry Wennlund
Robert C. Winchester
Kathleen Wojcik
Harry "Babe" Woodyard
Larry Woolard
Harry "Bus" Yourell

# Illinois Rulemaking Process

Law basically exists in 4 forms: constitutional law, statutory law, administrative law and case law. Constitutional law creates broad guidelines. Legislation creates specific restrictions, authorities and programs. Administrative law adds the detail often necessary to implement statutory law. If these 3 categories of law do not sufficiently address all the variables, case law evolves.

In 1975, the Illinois General Assembly enacted the Illinois Administrative Procedure Act (IAPA) [5 ILCS 100] to create a procedure through which administrative agencies would exercise the authority delegated to them by the legislature to create administrative law through the adoption of agency regulations. In 1977, the IAPA was amended to add a process by which the General Assembly would oversee the exercise of this delegated authority through the Joint Committee on Administrative Rules (JCAR), a service agency of the General Assembly.

Rules of an administrative agency are valid and enforceable only after they have been through the rulemaking process prescribed in the IAPA. Rules are for the purpose of interpreting or implementing provisions of a statute and should not actually expand or limit the scope of the statute.

## Types of Rulemakings

**Proposed Rules.** These can be new rules or amendatory rulemakings. Frequently this is referred to as "regular rulemaking" or "permanent rulemaking". A 2-step (First Notice and Second Notice) process is followed, requiring from 90-365 days. Aside from the basic 90 days, the agency controls the timing. Both the general public and the General Assembly, through JCAR, can have input prior to adoption.

**Emergency Rules.** Rules are effective immediately upon the agency filing them with the SOS or within 10 days after filing. These rules can be developed unilaterally by the agency; JCAR reviews after the rules are adopted. An emergency rulemaking lasts 150 days unless an earlier date is specified or the emergency rule is replaced by a permanent rulemaking. Emergency rulemaking can be used only if the agency finds a threat to the public interest, safety or welfare exists that the rulemaking will address.

**Peremptory Rules.** The IAPA provides for the immediate adoption of a rule required as a result of a federal law, federal rule, collective bargaining agreement, or a court order under conditions that preclude discretion by the agency concerning the rule's content. Peremptory rules are effective upon filing with the SOS or on the date required by the federal law, federal rule or court order. JCAR reviews these rules after their adoption.

**Exempt or Identical in Substance Rules.** The IAPA and the Environmental Protection Act create a special process through which PCB can adopt environmental regulations that are identical in substance to federal regulations that the State is required to adopt and enforce. These rulemakings are reviewed by JCAR after adoption.

**Required Rulemaking.** These are rules of an agency that can be adopted unilaterally by the agency by filing with the SOS. Examples are organization charts, principal address, Freedom of Information Act information, hearing officer qualifications, etc. JCAR reviews required rules after their adoption.

## The Process

**Drafting of Rules.** Administrative rules are drafted by State agencies; there is no central drafting bureau as for statutes. The involvement of the public in the initial drafting is at the discretion of the agency; however, the IAPA encourages early public involvement and requires agencies to semiannually publish a Regulatory Agenda indicating, to the best of the agency's knowledge, the scope of the next 6 months' rulemaking activity.

**First Notice.** The First Notice period commences upon publication of an agency's Notice of Rulemaking in the Illinois Register. First Notice lasts a minimum of 45 days and terminates when the agency files with JCAR, commencing the Second Notice period. The only limitation is that a rulemaking expires if not adopted within 1 year after commencement of First Notice.

During First Notice, Department of Commerce and Economic Opportunity reviews each proposed rulemaking to determine possible impact on small business. The general public can submit comment on the rulemaking proposal to the agency and a public hearing may or may not be held during this period. The agency can volunteer to hold a hearing or must conduct one at the request of the Governor, JCAR, an association representing over 100 persons, 25 individuals, or a local government. Requests for hearing must be filed within 14 days after publication of the First Notice. The agency can modify the rulemaking during First Notice by submitting a First Notice Changes document to JCAR when it gives Second Notice.

**Second Notice.** The Second Notice period commences upon the agency's filing of the Second Notice with JCAR and lasts for a maximum of 45 days, unless extended for an additional 45 days by mutual agreement of JCAR and the agency. During the Second Notice Period, legislative review of the rules is conducted first by the JCAR staff and then at a meeting of the legislative members. JCAR reviews the proposed rules for statutory authority, propriety, standards for the exercise of discretion, economic effects, clarity, procedural requirements, technical aspects, etc.

During the JCAR review, JCAR and the agency can agree to modifications in the rulemaking that are adopted through written JCAR Agreements. The Agreements are appended to the Certificate of No Objection issued by JCAR at its regular meeting, or are still applicable if no Certificate is issued but the agency proceeds to adopt. If the agency does not choose to modify a rulemaking or if policy differences cannot be resolved during the review process, JCAR can take one of several actions.

## JCAR Motions

**Certificate of No Objection.** With the Certificate, the agency can proceed to adopt the rules by filing them with the SOS for publication in the Illinois Register.

**Recommendation.** (Issued along with a Certificate of No Objection) The agency must respond

to the Recommendation in writing within 90 days and can modify or withdraw the rule in response to a JCAR Recommendation. (After going to Second Notice, the agency cannot unilaterally modify/withdraw a rulemaking.) However, the agency can also adopt the rules with no changes at any time after receipt of the Certificate of No Objection.

**Objection.** An agency has to respond to an Objection in writing within 90 days, but after responding can proceed to adopt. The agency can modify or withdraw in response to a JCAR Objection or adopt the rules without changes. JCAR Agreements still apply.

**Filing Prohibition/Suspension.** If JCAR determines that a rulemaking constitutes a threat to the public interest, safety or welfare, the members can, by a 3/5 (8 members) vote, prohibit filing of a proposed rulemaking (or suspend an emergency or peremptory rulemaking). As a result, the proposed rulemaking may not be accepted for filing by the Secretary of State or enforced by the agency. An emergency or peremptory rulemaking, which is already a filed and adopted rule, becomes null and void. A Prohibition/Suspension is permanent unless: (1) the agency agrees to satisfactorily modify or withdraw the proposed rulemaking or satisfactorily modify or repeal the emergency or peremptory rulemaking; (2) JCAR withdraws the Prohibition/Suspension within 180 days; or (3) the General Assembly passes a joint resolution within 180 days stating that the GA desires to discontinue the Prohibition/Suspension.

## Public Notification

**Illinois Register** is the official State publication through which the public is informed of rulemaking activity. The Illinois Register is prepared by JCAR and published by the Secretary of State every Friday and can be accessed through the General Assembly website (www.ilga.gov) or the Secretary of State's website. The Register contains First Notice publication of rulemaking proposals, JCAR actions, a list of Second Notices received by JCAR, notices of final adoption of rulemakings, regulatory agendas (in January and July), executive orders and proclamations, and quarterly indexes to the current and previous issues. Over the course of a year, the Register can contain around 25,000 pages. It can be ordered in hardcopy from the Secretary of State for $290/year, can be seen on both the General Assembly's and the Secretary of State's websites, and is available electronically through private publishers.

**The Flinn Report: Illinois Regulation** is a 4-6 page weekly publication by JCAR that summarizes the rulemaking activity depicted in the matching issue of the Illinois Register. The Flinn Report is mailed free of charge to anyone who requests it and is also available weekly on the General Assembly's website at www.ilga.gov.

**Illinois Administrative Code.** The compilation of all agency rules is known as the Illinois Administrative Code. The Code, which is larger than the Illinois Compiled Statutes, is maintained electronically by JCAR/LIS. That database is located on the General Assembly's website at ilga.gov and State agencies can request from JCAR downloads of specific Sections to use for drafting purposes.

## Public Participation

One of the main reasons the IAPA was enacted was to give the public input into the rulemaking process. Any interested persons may contact an agency during the First Notice period to record a position on a rulemaking proposal. Additionally, many agencies consult with their identified interest groups during the pre-First Notice drafting process.

When the rulemaking goes to Second Notice, JCAR receives a copy or summary of all written comment submitted to the agency. In addition, the public may contact JCAR directly, and frequently does so if the agency refused to modify in response to public comment, or if they discovered the existence of the proposal too late for the First Notice public comment period.

Public comment is vital to the JCAR review process. Frequently, it is only through this comment that the Committee fully recognizes the effect of a rule on the individual, business or local government that has to adhere to it on a daily basis.

The public may also lodge complaints about existing rules. Agencies are required to allow the public to suggest rule revisions. Additionally, JCAR may open an investigation into an existing rule on its own volition or based on public complaint.

# 2005 Rulemaking

In 2005, JCAR reviewed 533 rulemakings, 420 of which were general rulemakings, 85 emergency rulemakings, 22 peremptory rulemakings and 6 Pollution Control Board exempt rulemakings. JCAR voted 6 Filing Prohibitions, 11 Objections and 24 Recommendations on general rulemakings; 8 Objections and 7 Recommendations on emergency rulemakings; and 1 Objection and 1 Recommendation on peremptory rulemaking.

Some of the more notable rules on which JCAR took action are described here.

## General Rulemaking

**DCFS – Licensing Standards for Day Care Centers**

The Department of Children and Family Services proposed updating the day care center physical plant/ indoor space requirements to subject the center to Structural Pest Control Act notification requirements. At its 9/04 meeting, JCAR recommended that DCFS initiate rules requiring a day care center to notify the parent or guardian of whether the center uses pesticides before the child is enrolled. JCAR reviewed DCFS's response at its 1/11/05 meeting. The agency agreed, but has yet to initiate rulemaking.

**HFS – Medical Assistance Program**

The Department of Healthcare and Family Services proposed a rulemaking requiring a written Plan of Care to be developed and reviewed and approved by HFS for each child receiving home and community based services for medically fragile/technology dependent disabled children. Children are generally eligible if the per diem rate does not exceed 125% of the Statewide average per diem for hospital or institutional care. At its 9/14/04 meeting, JCAR recommended that HFS seek a statutory amendment to clearly authorize the Statewide average rate approach at the 125% level (statute currently says 100%) or make the statute more flexible with respect to the threshold. HFS' response, which was reviewed at JCAR's 1/11/05 meeting, maintained that a statutory amendment is unnecessary as federal regulations allow states to use individual caps for purposes of cost determination under the waiver if the waiver is cost neutral in the aggregate. A 25% deviation from the statewide average can still reflect the cost of appropriate and comparable institutional care because of regional cost differences in the State. HFS did not address the fact that Illinois statute applies an individual cap of no more than 100% of the cost of institutional care. JCAR issued a Notice of Failure to Remedy.

**DPH – Illinois Manufactured Home Tiedown Code, Manufactured Home Installation Code, Illinois Modular Dwellings and Mobile Structures Code, Manufactured Home Installer Course Accrediation Code, and Manufactured Home Community Code**

The Department of Public Health proposed updating its manufactured housing rules. At its 1/05 meeting, JCAR objected to, and prohibited the filing of, these rulemakings because of the considerable uncertainty that appeared to exist regarding the viability of some of the standards. While DPH responded to some of the points raised by commentors, not all affected parties had knowledge of, and an opportunity to discuss with DPH, all the changes DPH offered to make. DPH indicated that it was willing to consider further modification in its proposals to make them as clear and technically feasible as possible. JCAR determined

that the public interest would not be served by adoption of this package until the remaining issues were resolved. However, the 1-year time period the IAPA prescribes for completion of a rulemaking process would have terminated 1/29/05 for 4 of the 5 rulemakings and 2/12/05 for the fifth. To afford DPH and the affected parties more time to resolve the remaining issues with these rulemakings, JCAR objected and prohibited their filing in their current form. This stopped the tolling of the 1-year rulemaking process. DPH held further meetings and modified the rulemakings. JCAR withdrew the Filing Prohibitions but DPH failed to adopt rules before expiration of the 1 year deadline. The agency later re-proposed the rulemakings.

**SURS – Universities Retirement**

The State Universities Retirement System proposed a rulemaking reflecting the 2 statutory options for the period of employment that can be used to determine retirees' final average salary for pension calculation purposes: (1) the 4 consecutive academic years during which the employee's earnings were highest or (2) the last 48 months of consecutive service. At its 1/05 meeting, JCAR recommended that SURS seek specific statutory authority for the rule provision allowing near-term retirees to employ a calendar year final rate of earnings computation. These employees are currently required by Section 15-212 of the Personnel Code to use an academic year computation method . SURS agreed. HB 2694 & SB 461 were introduced early in 2005 but failed to move in their respective houses.

**HFS – Specialized Health Care Delivery Systems**

The Department of Healthcare and Family Services proposed extending the requirements for Medicaid participation, under a federal waiver, by Supportive Living Facilities (SLF). At its 2/05 meeting, JCAR recommended that DPA seek specific statutory authority for continuing the SLF program beyond its current demonstration program status. Section 5-5.01A of the Public Aid Code authorizes only a demonstration project. SB 1651/PA 94-342 directed DPA to establish and maintain a Supportive Living Program.

**CMS – Senior Citizens and Disabled Persons Prescription Drug Discount Program**

The Department of Central Management Services proposed reducing the annual enrollment fee for the Senior Citizens and Disabled Persons Prescription Drug Discount Program from $25 to $10 and allowing the CMS Director to waive the fee for a specified period. At its 5/05 meeting, JCAR objected because CMS implemented the reduced fee before adopting the rulemaking, which violated the Senior Citizens and Disabled Persons Prescription Drug Discount Program Act and the Illinois Administrative Procedure Act. CMS pledged to avoid such circumstances in the future.

**OSFM – Illinois Elevator Safety Rules**

The Office of the State Fire Marshal proposed rules for the design, construction, operation, inspection, testing, maintenance, alteration and repair of elevators, dumbwaiters, escalators, moving sidewalks, platform lifts, stairway chairlifts and automated people movers, including licensing of personnel and businesses that work on these conveyances. At its 6/05 meeting, JCAR objected to and prohibited filing of the proposal because it contained several provisions inconsistent with current statute. Amendments to the Elevator Safety and Regulation Act were passed during the fall veto session (SB 331/PA 94-94-69). The Elevator Safety Review Board withdrew the rulemaking and will re-propose a new rulemaking consistent with the revised Act. Based on that action, JCAR withdrew its Filing Prohibition.

**DES – Notices, Records, Reports**

The Department of Employment Security proposed allowing an employer who solely employs household workers in the employer's private home (housekeepers, cleaning people, babysitters, maids and nannies) to file UI contributions and reports yearly, rather than quarterly, if the employer specifically chooses the yearly option at the beginning of the calendar year. At its 9/05 meeting, JCAR objected because DES lacked statutory authority to allow annual reporting and contributions. DES filed a response pledging to adopt the rule only if the new legislation was enacted and to modify the rule to conform to statute. HB 2133/PA 94-723 was enacted.

**DHS – Child Care**

The Department of Human Services proposed expanding eligibility for child care assistance to parents or other relatives who are working (previously outside the home only). At its 9/05 meeting, JCAR recommended that DHS further review and amend these rules because the discretionary power of the Department to provide or withhold child care assistance to low income workers is not implemented through clearly specified standards that help avoid arbitrary application and that fully inform those persons affected by the program. JCAR notes that DHS proposed this rulemaking in response to a previous JCAR review of these rules in which it recommended that DHS specify all the standards that must be met and the relevant documentation required to verify legitimate employment or self-employment for child care assistance purposes without regard to where the work is performed. While JCAR recognizes that these proposed amendments are an improvement and no longer disqualify those performing work in their home, the rules remain incomplete. In response, DHS let this rulemaking expire, with announced plans to propose yet a third rulemaking revising these rules.

**SBE – Conservation Education; Staff Development Plans and Programs; Insurance for Certificated Employees; Professional Development Block Grant; Scientific Literacy; Alcohol and Drug Education Initiative; Summer School for Remedial Education; Alternative Learning Opportunities Program; Urban Education Partnership Program; Comprehensive Arts Program; Mathematics and Science Loan Program; School Technology Program**

The State Board of Education proposed to repeal the rules for 12 programs that are no longer funded, while creating a new Part 500 (Replacement of Required Rules) that lists the repealed programs and states that, if funding resumes, the rules will be readopted. While the programs are unfunded, the statutes requiring them still exist. At its 10/05 meeting, JCAR recommended that if SBE proposes to repeal these rules, it should initiate legislation to repeal the underlying statutes. SBE agreed.

**SBE – Public Schools Evaluation, Recognition and Supervision**

The State Board of Education proposed revising the Part to accommodate federal No Child Left Behind and to reflect recent Public Acts. At its 11/05 meeting, JCAR recommended that, when SBE receives notification of the US Department of Education's approval or disapproval of indicators used to determine adequate yearly progress for children with disabilities based on their IEP, it propose amendments to repeal whichever provisions implement policy that has not received approval. SBE had proposed 2 separate procedures to accommodate possible USDE determinations. Additionally, JCAR recommended that, when the Board finalizes its procedures for the implementation of the Student Information System, it propose a rulemaking clarifying the information being requested, the manner in which districts are to report this data,

how districts lacking technological capacity to participate in this electronic system will submit data, and the timelines for data submission. SBE agreed.

**IRB – License Hearings**

The Illinois Racing Board proposed revising procedures regarding hearings for the purpose of awarding racing dates. At its 11/05 meeting, JCAR recommended that IRB seek a statutory clarification of apparently mutually exclusive provisions in Section 20(f-5) of the Horse Racing Act regarding rulemaking requirements for the reallocation of racing dates on an emergency basis and then propose appropriate rules to implement that clarification. IRB responded that it does not believe a statutory clarification is necessary.

**PCB – Effluent Standards**

The Pollution Control Board set a monthly average limit of 1 mg/l for total phosphorus for any new or expanded discharges into general use waters from specified water treatment works, exempting dischargers if they can demonstrate that phosphorus from their treatment works is not the limiting nutrient in the receiving water and allowing EPA to impose alternative phosphorus effluent limits where warranted. At its 12/05 meeting, JCAR objected because the rulemaking imposed an undue economic and regulatory burden on the affected wastewater treatment facilities by requiring those facilities to meet interim standards for phosphorus discharges. EPA had committed to the USEPA to have numeric standards in place for nutrients, but not until in 2008. This additional time should allow affected entities more time to prepare for any costs associated with these standards. PCB responded that it believes the costs are reasonable and will procede with adoption of the rulemaking.

**DFPR-DPR – Illinois Landscape Architecture Act Of 1989**

The Department of Financial and Professional Regulations-Division of Professional Regulation proposed adding a new method for landscape architects to apply for registration – acceptance of examination. This method is being added to accommodate individuals who have taken and passed the Council of Landscape Architectural Registration Boards (CLARB) exam but are not licensed/registered in another state. When asked to explain to whom this new process would apply and under what circumstances these provisions would be applicable, DPR responded that codifying every situation that could arise would be restrictive. DPR refused to enter any Agreements to clarify the issue. At its 12/05 meeting, JCAR objected to Section 1275.55(a) of the rulemaking because the Department failed to make a clear distinction as to which applicants will apply for licensure under that subsection as opposed to Section 1275.60.

# 2005
# GENERAL RULEMAKINGS
# PROPOSED BY THE AGENCY

| AGENCY | NUMBER OF RULEMAKINGS |
|---|---|
| Department of Agriculture | 5 |
| Department on Aging | 1 |
| Attorney General | 3 |
| Auditor General | 2 |
| Capital Development Board | 2 |
| Carnival-Amusement Safety Board | 1 |
| Department of Central Management Services | 20 |
| Department of Children and Family Services | 8 |
| Department of Commerce and Economic Opportunity | 4 |
| Illinois Commerce Commission | 22 |
| Community College Board | 1 |
| Department of Corrections | 3 |
| Department of Employment Security | 4 |
| Drycleaner Environmental Response Trust Fund Council | 1 |
| State Board of Education | 50 |
| State Board of Elections | 7 |
| Elevator Safety Review Board | 1 |
| Emergency Management Agency | 9 |
| Environmental Protection Agency | 3 |
| Executive Ethics Commission | 2 |
| Department of Financial and Profession Regulation | 43 |
| State Fire Marshal | 3 |
| Gaming Board | 3 |
| Health Facilities Planning Board | 4 |
| Department of Healthcare and Family Services | 37 |
| Board of Higher Education | 2 |
| Housing Development Authority | 1 |
| Department of Human Rights | 2 |
| Department of Human Services | 15 |
| Department of Labor | 9 |
| Law Enforcement Training and Standards Board | 1 |
| Department of Natural Resources | 35 |

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|---|---|
| Pollution Control Board | 18 |
| Prisoner Review Board | 1 |
| Property Tax Appeal Board | 5 |
| Department of Public Health | 30 |
| Illinois Racing Board | 22 |
| Department of Revenue | 11 |
| Sex Offender Management Board | 1 |
| Secretary of State | 24 |
| State Employees' Retirement System of Illinois | 1 |
| Department of State Police | 1 |
| State Universities Retirement System | 8 |
| State Toll Highway Authority | 3 |
| Student Assistance Commission | 10 |
| Teacher's Retirement System | 3 |
| Department of Transportation | 15 |
| Treasurer | 4 |
| **TOTAL** | **461** |

# 2005
# GENERAL RULEMAKINGS
# CONSIDERED BY JCAR

| AGENCY | NUMBER OF RULEMAKINGS |
|---|---|
| Department of Agriculture | 5 |
| Department on Aging | 1 |
| Attorney General | 2 |
| Auditor General | 2 |
| Capital Development Board | 2 |
| Department of Central Management Services | 14 |
| Department of Children and Family Services | 7 |
| Department of Commerce and Economic Opportunity | 6 |
| Illinois Commerce Commission | 23 |
| Community College Board | 2 |
| Department of Corrections | 3 |
| CPA Board of Examiners | 1 |
| Criminal Justice Information Authority | 1 |
| State Board of Education | 43 |
| State Board of Elections | 6 |
| Elevator Safety Review Board | 1 |
| Emergency Management Agency | 8 |
| Environmental Protection Agency | 3 |
| Department of Employment Security | 7 |
| Executive Ethics Commission | 2 |
| Department of Financial and Professional Regulation | 25 |
| State Fire Marshal | 1 |
| Gaming Board | 1 |
| Department of Healthcare and Family Services | 29 |
| Board of Higher Education | 1 |
| Housing Development Authority | 1 |
| Department of Human Rights | 2 |
| Department of Human Services | 25 |
| Department of Labor | 4 |
| Department of Military Affairs | 1 |
| Department of Natural Resources | 45 |
| Pollution Control Board | 25 |
| Property Tax Appeal Board | 2 |

| | |
|---|---|
| Department of Public Health | 27 |
| Illinois Racing Board | 19 |
| Department of Revenue | 14 |
| Sex Offender Management Board | 1 |
| Secretary of State | 22 |
| Department of State Police | 2 |
| State Police Merit Board | 1 |
| State Universities Retirement System | 5 |
| Student Assistance Commission | 12 |
| Teacher's Retirement System | 3 |
| Department of Transportation | 12 |
| Treasurer | 1 |
| **TOTAL** | 420 |

# 2005
# GENERAL RULEMAKINGS:
# JCAR ACTION

| AGENCY | REC | OBJ | PROHIBIT |
|---|---|---|---|
| Department of Central Management Services | 2 | 1 | |
| State Board of Education | 14 | 1 | |
| Elevator Safety Review Board | | 1 | 1 |
| Department of Employment Security | | 1 | |
| Department of Financial and Professional Regulation | | 1 | |
| Department of Healthcare and Family Services | 1 | | |
| Department of Human Services | 2 | | |
| Department of Military Affairs | 1 | | |
| Department of Natural Resources | 1 | | |
| Pollution Control Board | | 1 | |
| Department of Public Health | | 5 | 5 |
| Illinois Racing Board | 1 | | |
| Department of Revenue | 1 | | |
| State Universities Retirement System | 1 | | |
| **TOTALS** | **24** | **11** | **6** |

# 2005
# GENERAL RULEMAKINGS:
# BASIS FOR JCAR ACTION

| Basis for Objection | Number of Objections | Percentage of Total |
|---|---|---|
| Statutory Authority/Legislative Intent | 2 | 18% |
| Policy Not In Rule/IAPA Violation | 2 | 18% |
| Economic Impact | 1 | 9% |
| Resulting Regulatory Deficiency | 6 | 55% |
| **TOTAL** | **11** | **100%** |

| Basis for Recommendation | Number of Recommendations | Percentage of Total |
|---|---|---|
| More Timely Rulemaking | 2 | 8% |
| Further Rulemaking | 3 | 12% |
| Statutory Authority/Legislative Intent | 16 | 64% |
| Insufficient Standards for Exercise of Agency Discretion | 1 | 4% |
| Procurement Policy Board Review | 1 | 4% |
| Economic Impact | 1 | 4% |
| Policy Not in Rule | 1 | 4% |
| **TOTAL** | **25** | **100%** |

| Basis for Filing Prohibition | Number of Filing Prohibitions | Percentage of Total |
|---|---|---|
| Resulting Regulatory Deficiency | 5 | 83% |
| Statutory Authority/Legislative Intent | 1 | 17% |
| **TOTAL** | **6** | **100%** |

# 2005
# EMERGENCY RULEMAKING

Section 5-45 of the Illinois Administrative Procedure Act specifies that agencies may use this short form rulemaking procedure, in which a rule is adopted without prior opportunity for public and JCAR comment, only if the agency finds that an emergency exists that requires the adoption of a rule within fewer days than normally required. The agency must state the emergency situation in writing and make an effort to notify the affected public. An emergency rule becomes effective immediately upon filing with the Secretary of State or at a stated date within 10 days after filing and is effective for up to 150 days, after which a general rulemaking has to be adopted if the policy is to continue. No emergency rule may be adopted more than once in any 24-month period, with statutorily specified exceptions. The 94th General Assembly has enacted blanket approval for use of emergency rulemaking to implement the FY06 budget and for any rules implementing the Public Aid Code or Circuit Breaker and Senior Care drdug programs and to DPH for rulemakings designed to protect the public health.

## ISAC – ILLINOIS VETERAN GRANT (IVG) PROGRAM

The Illinois Scholarship Assistance Commission expanded Illinois Veteran Grant eligibility to Illinois National Guardsmen and Reservists and eliminated the requirement that, if the applicant is still in the Armed Forces, he or she must have honorably completed his or her initial active duty commitment before IVG eligibility. At its 10/04 meeting, JCAR recommended that ISAC strive to correct some deficiencies in its companion proposed rules and that it work with the General Assembly to devise a clearer statutory base for the IVG program.

## ICC – EMPLOYEE WALKWAYS IN RAILROAD YARDS

The Illinois Commerce Commission required rail carriers to provide safe walkways for railroad workers who frequently work on the ground performing switching activities in yard tracks constructed or undergoing reconstruction after 9/1/04 and allowing waiver upon a showing that compliance will impose an undue hardship on the rail carrier. At its 10/04 meeting, JCAR recommended that the waiver provision be deleted in the identical permanent rulemaking as the Commercial Transportation Law permits ICC to waive any safety requirements under the Safety Requirements for Rail Carriers Article only if continued adherence is not required for the safety of railroad employees or the public. The law does not allow waiver simply because of hardship imposed on rail carriers. At its 1/05 meeting, JCAR reviewed the agency's response, which was an agreement to modify the proposed rule to allow a rail carrier to petition ICC for a waiver only as allowed by statute.

## CMS – ACQUISITION, MANAGEMENT AND DISPOSAL OF REAL PROPERTY

The Department of Central Management Services repealed, within properties managed by CMS, a ban on exhibits that promote a religious/political philosophy or a political candidate. At its 1/05 meeting, JCAR recommended that CMS review its companion proposed rulemaking and the Part generally and clarify its currently confusing policies allowing "displays" expressing Constitutionally protected free speech yet barring political/religious "exhibits". Additionally, JCAR recommended that CMS add to this Part the standards it will apply in determining whether it will grant or deny a permit. CMS failed to respond and JCAR issued a Notice of Failure to Remedy. On 11/28/05, CMS proposed a permanent rule to address this topic.

## SBEL – ADMINSTRATIVE COMPLAINT PROCEDURES FOR VIOLATIONS OF TITLE III OF HAVA

The State Board of Elections adopted an emergency rule establishing a federally required complaint procedure that may be used by any person who believes that a specified violation of the federal Help America Vote Act (HAVA) has occurred. At its 1/05 meeting, JCAR recommended that, prior to submitting 2nd Notice on the companion proposed rulemaking, SBEL review and address JCAR's concerns about its proposed rules, especially the provision that places all costs for dispute resolution services on the complainants. SBEL agreed and will assume the costs of dispute resolution services.

## DPH – LONG TERM CARE FACILITIES

The Department of Public Health established requirements governing long term care services to identified offenders (sex offenders and felons). At its 8/05 meeting, JCAR recommended that DPH ameliorate any unduly burdensome economic impact on the affected public created by the emergency rule. DPH agreed and modified the rulemakings to delete the requirement that facilities conduct a UCIA background check on current residents; change to annually (from 6 months and 90 days pre-licensure) the requirements with which facilities must comply if offenders are resident; limit segregation to offenders whose risk assessment indicates a need for segregation; and delete a provision that contravenes statute by allowing transfer or discharge of an offender when a facility is unable to meet the Part's requirements.

## CMS – FINANCIAL INCENTIVE OPT OUT OF THE STATE EMPLOYEES GROUP HEALTH PLAN FOR NON-MEDICARE STATE EMPLOYEES RETIREMENT SYSTEM ANNUITANTS

The Department of Central Management Services established the Opt Out Incentive for non-Medicare SERS annuitants who elect not to participate in the insurance programs provided by the State Employees Group Insurance Act. At its 11/05 meeting, JCAR objected because, contrary to the IAPA, the rulemaking states that Department policies, pamphlets and memoranda prevail over governing statute and rules and because the rulemaking fails to specify the amount of the financial incentive to be offered. In response, CMS agreed to purge the text relying on external sources and to include the amount of the incentive.

## HFS – MEDICAL PAYMENT

The Department of Healthcare and Family Services adopted a rulemaking allowing it to require prior approval before reimbursement for a brand name prescription drug if the patient is at least 21 years old and has already received 3 brand name prescription drugs in the previous 30 days. At its 11/05 meeting, JCAR objected because no standards are provided for when HFS will or will not reimburse for the cost of brand name drugs. That omission constitutes policy undefined in rule.

# EMERGENCY RULEMAKINGS
# ADOPTED BY THE AGENCY

| AGENCY | NUMBER OF RULEMAKINGS |
|---|---|
| Attorney General | 1 |
| Capital Development Board | 2 |
| Department of Central Management Services | 6 |
| Department of Children and Family Services | 1 |
| Department of Commerce and Economic Opportunity | 6 |
| Illinois Commerce Commission | 1 |
| Department of Corrections | 1 |
| State Board of Education | 3 |
| State Board of Elections | 3 |
| Department of Employment Security | 2 |
| Executive Ethics Commission | 2 |
| Department of Financial and Professional Regulation | 2 |
| Gaming Board | 1 |
| Department of Healthcare and Family Services | 20 |
| Board of Higher Education | 1 |
| Department of Human Services | 3 |
| Department of Labor | 1 |
| Law Enforcement Training and Standards Board | 1 |
| Department of Natural Resources | 4 |
| Department of Public Health | 13 |
| Illinois Racing Board | 3 |
| Department of Revenue | 1 |
| Secretary of State | 2 |
| Department of Transportation | 1 |
| Treasurer | 2 |
| **TOTAL** | **83** |

# 2005
# EMERGENCY RULEMAKINGS
# CONSIDERED BY JCAR

| AGENCY | NUMBER OF RULEMAKINGS |
|---|---|
| Department of Agriculture | 1 |
| Attorney General | 1 |
| Capital Development Board | 2 |
| Department of Central Management Services | 4 |
| Department of Children and Family Services | 1 |
| Department of Commerce and Economic Opportunity | 5 |
| Illinois Commerce Commission | 1 |
| Department of Corrections | 1 |
| State Board of Education | 3 |
| State Board of Elections | 4 |
| Department of Employment Security | 2 |
| Executive Ethics Commission | 1 |
| Department of Financial and Professional Regulation | 2 |
| Governor's Ethics Commission | 1 |
| Department of Healthcare and Family Services | 20 |
| Department of Human Services | 5 |
| Department of Labor | 1 |
| Law Enforcement Training and Standards Board | 1 |
| Department of Military Affairs | 1 |
| Department of Natural Resources | 4 |
| Department of Public Health | 13 |
| Illinois Racing Board | 3 |
| Department of Revenue | 3 |
| Secretary of State | 2 |
| Department of Transportation | 1 |
| Treasurer | 2 |
| **TOTAL** | 85 |

# 2005
# EMERGENCY RULEMAKINGS:
# JCAR ACTION

| AGENCY | REC | OBJ | SUSPENSION |
|---|---|---|---|
| Department of Central Management Services | 1 | 1 | |
| State Board of Education | | 1 | |
| State Board of Elections | 1 | | |
| Department of Healthcare and Family Services | | 2 | |
| Department of Human Services | | 2 | |
| Department of Public Health | 5 | | |
| Illinois Racing Board | | 1 | |
| Department of Revenue | | 1 | |
| **TOTALS** | **7** | **8** | **0** |

# 2005
# EMERGENCY RULEMAKINGS:
# BASIS FOR JCAR ACTION

| Basis for Objection | Number of Objections | Percentage of Total |
|---|---|---|
| Agency Created Emergency | 2 | 25% |
| Statutory Authority/Legislative Intent | 1 | 13% |
| IAPA Violation | 1 | 13% |
| No Unavoidable Emergency Existed | 2 | 25% |
| Policy Not In Rule | 2 | 25% |
| **TOTAL** | **8** | **100%** |

| Basis for Recommendation | Number of Recommendations | Percentage of Total |
|---|---|---|
| Resulting Regulatory Deficiency | 2 | 18% |
| Insufficient Standards for Exercise of Agency Discretion | 2 | 18% |
| Statutory Authority/Legislative Intent | 1 | 9% |
| Economic Impact | 5 | 45% |
| More Complete Regulatory Agenda | 1 | 9% |
| **TOTAL** | **11** | **100%** |

| Basis for Suspension | Number of Suspensions | Percentage of Total |
|---|---|---|
| None | | |
| **TOTAL** | **0** | **0%** |

# 2005
# PEREMPTORY & EXEMPT RULEMAKING

Section 5-50 of the Administrative Procedure Act authorizes agencies to use peremptory rulemaking, in which the rule is adopted without prior opportunity for public and JCAR comment, only if the rulemaking is required by federal law, federal regulations, court orders or collective bargaining agreements and if the agency cannot exercise any discretion with respect to the rule content. Agencies must file the peremptory rule with the Secretary of State within 30 days after the change in rules is required.

Exempt rulemaking is a specialized form of rulemaking, similar to the peremptory rulemaking process, reserved for use by the Pollution Control Board (PCB) under the Environmental Protection Act. PCB can use this short form procedure only to adopt Illinois regulations that are "identical in substance" to mandated federal regulations.

**DHS – FOOD STAMPS**

The Department of Human Services provided that additional compensation a US Armed Forces member receives while deployed to or serving in a designated combat zone will not be considered income in determining Food Stamp eligibility. At its 8/05 meeting, JCAR objected to DHS using peremptory procedures to adopt the rulemaking 7 months after a change in federal law required it. The IAPA requires that peremptory rulemaking occur within 30 days after adoption of the underlying federal law. DHS acknowledged that it failed to adopt the policy within 30 days and agreed to make every attempt in the future to adhere to the IAPA requirements.

**CMS – PAY PLAN**

The Department of Central Management Services adopted a rulemaking reflecting salary adjustments for teachers at DHS' Illinois School for the Deaf (Jacksonville). An attempt to create special pay for teachers who are bilingual or sign language proficient resulting in rule text penalizing those who are proficient in both, comparred to those proficient in one or the other. At its10/05 meeting, JCAR recommended that CMS clarify this language. CMS responded by submitting to JCAR a list of modifications it plans to make a proposed rulemaking.

# 2005
# PEREMPTORY & EXEMPT RULEMAKINGS ADOPTED BY THE AGENCY

| AGENCY | NUMBER OF RULEMAKINGS |
|---|---|
| Department of Agriculture | 4 |
| Department of Central Management Services | 13 |
| Department of Children and Family Services | 2 |
| Department of Human Services | 2 |
| Pollution Control Board | 18 |
| Department of Transportation | 5 |
| **TOTAL** | 44 |

# 2005
# PEREMPTORY & EXEMPT RULEMAKINGS CONSIDERED BY JCAR

| AGENCY | NUMBER OF RULEMAKINGS |
|---|---|
| Department of Agriculture | 4 |
| Department of Central Management Services | 11 |
| Department of Human Services | 2 |
| Pollution Control Board | 6 |
| Department of Transportation | 5 |
| **TOTAL** | 28 |

# 2005
# PEREMPTORY & EXEMPT RULEMAKINGS:
# JCAR ACTION

| AGENCY | REC | OBJ | SUSPENSION |
|---|---|---|---|
| Department of Central Management Services | 1 | | |
| Department of Human Services | | 1 | |
| **TOTALS** | **1** | **1** | **0** |

# 2005
# PEREMPTORY & EXEMPT RULEMAKINGS: BASIS FOR JCAR ACTION

| Basis for Objection | Number of Objections | Percentage of Total |
|---|---|---|
| IAPA Violation | 1 | 100% |
| **TOTAL** | **1** | **100%** |

| Basis for Recommendation | Number of Recommendations | Percentage of Total |
|---|---|---|
| Further Rulemaking | 1 | 100% |
| **TOTAL** | **1** | **100%** |

| Basis for Suspension | Number of Suspensions | Percentage of Total |
|---|---|---|
| None | | |
| **TOTAL** | **0** | **0%** |

# 2005
# REQUIRED RULEMAKING

Section 5-15 of the Illinois Administrative Procedure Act requires agencies to maintain as rules: an organizational description, procedures by which the public can obtain information, materials to aid users in finding and using an agency's rules, a description of the agency's rulemaking procedures, minimum qualifications for administrative law judges in contested cases and incorporations by reference of rules, regulations, standards or guidelines of a US agency or nationally or state recognized organization or association. These required rules may be adopted, amended or repealed by filing a certified copy with the Secretary of State and may take effect immediately.

In 2005, the Medical Distrcti Commission, Procurement Policy Board, BHE, DNR, DOA, and SBE adopted 8 required rulemakings. While all required rulemakings were reviewed by JCAR subsequent to their adoption, only one, adopted by SBE, received any adverse action.

**SBE – ACCESS TO INFORMATION OF THE STATE BOARD OF EDUCATION UNDER THE FREEDOM OF INFORMATION ACT**

The State Board of Education updated FOIA rules and subjected materials incorporated by reference to FOIA inspection procedures. At its 5/05 meeting, JCAR objected because requiring the public to file a FOIA request to procure a copy of rulemaking materials incorporated by reference under the IAPA violates the IAPA. SBE agreed to reverse the change. On 6/2/05, SBE adopted a further required rule that eliminated the IAPA violation.

# 2005
# JCAR ASSESSMENT OF APPROPRIATENESS OF AGENCY RESPONSE TO JCAR ACTION

| AGENCY | ASSESSMENT | | | | |
|---|---|---|---|---|---|
| | APPROPRIATE | FAILURE TO REMEDY | JOINT RESOLUTION | JCAR WILL MONITOR | NO COMMENT |
| Department of Central Management Services | 1 | 1 | | | |
| Elevator Safety Review Board | 1 | | | | |
| State Board of Education | 14 | | | 12 | 1 |
| State Board of Elections | 1 | | | 1 | |
| Department of Healthcare and Family Services | 2 | | | | |
| Department of Human Services | 4 | | | | |
| Department of Natural Resources | 1 | | | | |
| Department of Public Health | 10 | | | | |
| Illinois Racing Board | 1 | | | | |
| Department of Revenue | 1 | | | | 1 |
| State Universities Retirement System | 1 | | | 1 | |
| **TOTAL** | 37 | 1 | 0 | 14 | 2 |

# Recommended Legislation

Rulemakings considered by JCAR occasionally engender JCAR Objections or Recommendations based on lack of clear statutory authority, or engender written agreements with agencies to pursue legislation to clarify statute, resolve ambiguities or seek specific statutory authority. The following are several instances in which this occurred during 2005.

The **Illinois Student Assistance Commission** adopted an emergency rule, at the request of the Offices of the Lt. Governor and Attorney General, to make Illinois National Guardsmen (ING) who have served in Iraq immediately eligible for the Illinois Veteran Grant (IVG), regardless of their length of service. Prior to this emergency rule, ING were not eligible for IVG until after the end of their ING service. During the course of their ING service, they were eligible for the National Guard Grant (NGG) instead. The benefits of the NGG are slightly ($200-300/semester) less than the IVG. The emergency rule was not very clearly written and based on an even more obscure underlying statute, put together piecemeal over the years, that needed to be updated and reorganized. JCAR recommended that ISAC rewrite the rulemaking and seek clarification of the statute. ISAC agreed and cause to be introduced HB 815/PA 94-583.

The **Department of Public Aid** revised its rules for home based services for medically fragile, technology dependent children. Statute says home services can be provided if they can be provided at a cost that **does not exceed the cost** of providing the service in an institution (i.e., hospital, ICF or SNF). This rule authorizes home scvices if the cost is not more than 125% of institutional care. The federal waiver that DPA received for this program also contains the 125% language. DPA went with the 125% approach to make up for some facilities being more expensive than others. While the direction DPA is taking may be reasonable and fair, it diverges from the standard set by statute. JCAR recommended that DPA seek a statutory amendment clearly authorizing the statewide average rate approach at the 125% level or making the statute more flexible with respect to the threshold. DPA has failed to do so.

The **State Universities Retirement System** proposed a rulemaking that reflects statutory mechanisms for determining average annual earnings for pension calculation purposes. In recognition of the fact that long-standing SURS policy not in rule has led persons nearing retirement to count on use of a methodology that is not entirely consistent with statute, SURS proposed a transition period during which certain participants can choose between the statutorily sanctioned methodology and the methodology they have been led to believe is legitimate. JCAR recommended that SURS seek specific statutory authority for the provision of the rule allowing near-term retirees to employ a calendar year final rate of earnings computation. These employees are currently required to use an academic year computation method by Section 15-212 of the Personnel Code. HB 2694 and SB 461 were introduced for this purpose in 2005 but were not enacted.

The **Department of Public Aid** proposed extending the Supportive Living Facilities program it has been operating as a demonstration under a federal Medicaid waiver and State statute to a full-scale program. While the federal government has approved expansion beyond the demonstration phase, State statute still authorizes only the demonstration program. JCAR recommended that DPA seek a statutory change removing the demonstration status. SB 1651/PA 94-342 was enacted.

The **Elevator Safety Review Board** proposed implementing a PA effective 6/1/03 that requires licensing of elevator mechanics, contractors and inspectors and registration of elevators and similar conveyances. Almost 150 Agreements were drafted addressing mainly technical problems; however, some of the issues were statutory, especially those involving statutory timelines that had already expired. JCAR objected to and

prohibited filing of the amendments to stop rulemaking activity until the General Assembly had an opportunity to consider legislation during the veto session. SB 331/PA 94-698 was enacted. The Elevator Safety Review Board announced its intention to withdraw the rulemaking and replace it with a revised proposal reflecting the revised statute and JCAR withdrew its Filing Prohibition.

The **State Board of Education** proposed to repeal the rules for 12 programs that are no longer funded, replacing them with a new Part that lists the repealed programs and states that, if funding resumes, the rules will be readopted. JCAR recommended that, if these programs are not being conducted, SBE initiate legislation to repeal the underlying statutes. SBE agreed, but nothing has yet been introducted.

**IRB** proposed revising its procedures for racing date hearings. Section 20(f-5) of the Horse Racing Act allows IRB, *pursuant to Board rules*, to reallocate racing dates in cases of emergency. A later provision specifies that the IAPA will *not* apply to the emergency hearing or emergency reallocation of racing dates. This is, at best, confusing. JCAR recommended that IRB seek a statutory clarification of the apparently mutually exclusive provisions in Section 20(f-5) and then propose appropriate rules to implement the revised statute. IRB does not believe a statutory clarification is necessary.

# Public Act Review

Section 5-105 of the Illinois Administrative Procedure Act [5 ILCS 100/5-105] requires JCAR to maintain a review program to monitor the implementation of new laws and changes in law through State agency rulemaking activities. The Committee fulfills this statutory obligation through its Public Act review program.

Under this program, Committee staff reviews each new Public Act and makes a preliminary determination as to whether rulemaking might be necessary for proper implementation. After the list has been culled of those obviously not requiring rulemaking (appropriations, criminal and civil law, local government issues), the affected State agency is contacted for its opinion. If necessary, these written contacts are followed up with discussion between JCAR and the agency.

The final list of Public Acts for which JCAR and the agency agree that rulemaking is warranted is then monitored by the Committee as long as necessary to insure that progress is made toward implementation. The primary goal of the Committee in this program is to ensure that appropriate rules are put into effect in a timely manner, as required by Section 5-105 of the IAPA.

If suitable progress is not made, JCAR, by the vote of a majority of its members, can initiate an investigation into existing rules of the agency. If, after the agency's appearance before the Committee to explain its failure to adopt anticipated rules, the JCAR members are not satisfied with the agency response, the Committee can object to the agency's conduct and may initiate further legislation to clarify the issue.

Frequently an agency is prompted to complete necessary rulemaking by conversation with JCAR or the agency enters voluntarily into written Agreements with JCAR to more thoroughly implement statutory requirements. At other times, JCAR votes a Recommendation or Objection based on a need for additional rulemaking.

JCAR aggressively follows its statutory mandate to monitor the implementation of Public Acts. However, the Committee is seldom required to press an agency to implement a new Public Act. Agencies generally respond to JCAR inquiries that they agree rulemaking is necessary and by stating an approximate date for commencement of rulemaking activity. In some instances, they offer valid responses as to why rulemaking will not be necessary. Occasionally, the JCAR inquiry brings to an agency's attention a Public Act relating to its programs that had escaped its notice. The Public Act review program can be helpful to both the legislature and the agencies in meeting their obligation to put the laws of the State of Illinois into effect in a timely and effective manner.

# Americans With Disabilities Act Grievance Procedures

JCAR recently audited the rules of all agencies to determine whether the agency had adopted the Americans With Disabilities Act Grievance Procedures required by federal law. 28 CFR 35.107 requires all agencies of state government employing at least 50 persons to adopt rules governing the grievance procedure. The following 21 agencies appeared to have no ADA rules and were contacted to determine whether the agency had a valid reason for considering itself exempt from the federal mandate:

Department on Aging
Department of Children and Family Services
State Board of Education
State Board of Elections
Emergency Management Agency
Department of Financial and Professional Regulation
Gaming Board
Governor's Office of Management and Budget
Historic Preservation Authority
Department of Human Rights
Department of Labor
Department of Military Affairs
Department of Public Aid
Department Public Health
Racing Board
State Employees' Retirement Systems
Department of State Police
State Toll Highway Authority
State Universities Retirement System
Student Assistance Commission
Teachers' Retirement System

Thirteen agencies were prompted to adopt ADA rules and 2 others responded that they do not meet the 50 employee threshold. Those that still have not responded include:

Department on Aging
State Board of Elections
Emergency Management Agency
Governor's Office of Management and Budget
Department of State Police
Teachers' Retirement System

# Complaint Review Program

The Illinois Administrative Procedure Act authorizes JCAR to review and investigate the rulemaking activities of State agencies when it receives a written complaint.

JCAR operates its complaint review program under Part 260 of its operational rules. Complaints may address one or more of the following: an existing rule of an agency; failure of an agency to fully or properly enforce its rules; absence of rules required by statute or necessary for the proper conduct of an agency program or function; and an agency rule that is applied, but not embodied in the rules of the agency promulgated pursuant to the IAPA.

Upon a receipt of a complaint, JCAR initiates a review to determine the need for a full investigation. Staff may raise questions or problems to discuss with the agency and will attempt to inform the agency of the substance of the complaint and any proposals for JCAR action prior to the meeting. Staff will report the results of the review and a proposal for action at a JCAR monthly meeting. A complaint may be placed on the agenda for a JCAR meeting by any JCAR member or the Executive Director if evidence exists that there are possible problems with the rules. If the same issues have been previously considered by JCAR, a complaint will not be placed on the agenda, unless the complaint reveals information not available to JCAR at the time the issue was considered and, if the information were available, it would have altered the outcome. Based on the complaint, JCAR may issue an Objection or Recommendation to existing rule, or to agency failure to maintain adequate rule, and afford the agency an opportunity to respond.

Complaints should be forwarded to the Executive Director of the Joint Committee at:

Joint Committee on Administrative Rules
700 Stratton Building
Springfield, Illinois 62706

# Legislative Activity Relating to JCAR and the IAPA

JCAR reviews any proposed legislation that amends the Illinois Administrative Procedure Act (IAPA) and brings to agencies' attention any resulting changes in rulemaking procedures. Legislation involving issues that have recently come before JCAR is also followed. Under its IAPA mandate to continually seek to improve the rulemaking process, JCAR occasionally initiates legislation revising the IAPA. It also may propose legislation when rules review brings attention to a statutory insufficiency or lack of clarity or to enforce its Objections or Recommendations when an agency has refused to adhere to those Objections or Recommendations. The following summary of legislation affecting JCAR and the rulemaking process covers the 1st year of the 94th General Assembly (2005).

PA 94-48 (effective 7/1/05) amends Section 5-45 of the IAPA to provide automatic approval for use of emergency rulemaking to implement the provisions of the State's fiscal year 2006 budget. Additionally, JCAR's option to suspend such an emergency rule is specifically precluded. However, no limitation is placed on JCAR's consideration of the permanent rulemakings that must follow the emergency rules if these provisions are to apply for more than 150 days. PA 94-48 additionally allows the Department of Healthcare and Family Services to adopt rules under this exception that are necessary to administer the Public Aid Code, the Children's Health Insurance Program Act, the Senior Citizens and Disabled Persons Property Tax Relief and Pharmaceutical Assistance Act, and the Senior Citizens and Disabled Persons Prescription Drug Discount Program Act. Thus, PA 94-48 continues the yearly trend of exempting specified rulemaking from meeting the IAPA criteria otherwise applicable to use of emergency rulemaking. This exemption precludes public comment and JCAR review before a rulemaking becomes effective.

# Judicial Activity Relating To JCAR And IAPA

Since JCAR's function is closely related to the interpretation of the Illinois Administrative Procedure Act (IAPA), it monitors and reports on court decisions and Attorney General opinions that affect the interpretation of the Act. One of the enumerated responsibilities of JCAR under the Act is "to study the impact of legislative changes, court rulings and administrative action on agency rules and rulemaking" [5 ILCS 100/5-105(c)]. This summary highlights significant judicial actions since enactment of the IAPA and discusses current activity.

## KEY INTERPRETATIONS OF THE IAPA

- Two past decisions construing the IAPA in accordance with positions supported by JCAR are especially noteworthy. The cases involved an attempt by the Department of Public Aid to change the method by which it calculated Medicaid payments to nursing homes. In the first case, *Senn Park I (Senn Park Nursing Center v. Miller*, 118 Ill. App. 3d 504, 455 N.E.2d 153, 74 Ill. Dec. 123 (1983)), the First District Appellate Court held that DPA's failure to follow the IAPA rulemaking procedures invalidated a new method it utilized for calculating Medicaid payments. The court stated that the definition of a "rule" found in Sec. 1-70 of the IAPA should be broadly construed in order to safeguard the public's right to comment on proposed agency policies. DPA's change in calculating the Medicaid payments, the court ruled, fell within the Sec. 1-70 definition of rule since it was a statement of general agency policy. As that policy was not adopted in compliance with the IAPA, it was invalid.

  DPA argued that the amended procedure was exempt from the notice and publication requirements by Sec. 5-35(c) of the IAPA because the State Plan was a contractual arrangement with the federal government, and was exempt under the contracts exception of the IAPA. Sec. 5-35(c) states that: "The notice and publication requirements of this Section do not apply to a matter relating solely to agency management...or to public property, loans or contracts."

  JCAR filed an amicus brief with the Illinois Supreme Court arguing that the inflation update procedure did not fall within the contracts exception. The Supreme Court agreed with the appellate court's interpretation of the contracts exception in which the lower court stated:

  We are persuaded that under the IAPA, as under the Federal APA, a matter comes under the contract exception only when contracts are clearly and directly involved.... We believe that with regard to nursing homes, contracts, whether State-Federal or agency-provider, are not clearly and directly involved.... Accordingly, we conclude that the amended inflation update procedure is not a matter relating to contracts within the meaning of the IAPA. (118 Ill. App. 3d at 511)

  The Supreme Court also stated that it is clear that the rulemaking procedure is intended to give interested persons an opportunity to submit their views and comments on rulemaking changes and that an agency must consider all submissions received. The court acknowledged that there are certain statutory exceptions to the notice and comment procedures, but that exceptions are of a limited nature and should be appropriately applied.

The court also agreed with the appellate court ruling that the amended inflation update procedure fell within the purview of the IAPA because the Public Aid Code incorporates the IAPA and the Code specifically requires rulemaking pursuant to the IAPA "during the process of establishing the payment rate for skilled nursing and intermediate care services, or when a substantial change in rates is proposed," in order to provide "an opportunity for public review and comment on the proposed rates prior to their becoming effective". [305 ILCS 5/5-5.7] (118 Ill. App. 3d at 512) The court found that the amended procedure fell within the definition of "rule" found in the IAPA and thus the failure of DPA to follow the notice and comment procedures required by the IAPA rendered the amended procedure invalid.

Following the decision of the appellate court in *Senn Park I*, DPA promulgated Emergency Rule 4.14221 implementing the amended inflation update procedure pursuant to the IAPA. Plaintiffs sought a declaratory judgment, asking the court to declare Emergency Rule 4.14221 void because there was no "emergency" as that term is defined in the IAPA. On 12/30/80, DPA withdrew the emergency rule. On appeal, the appellate court held that although the rule was withdrawn, the validity of the rule was at issue in order to determine the amount of reimbursement the plaintiffs were entitled to in *Senn Park I*. The appellate court further held that the circuit court had erred in finding the emergency rule valid because there was no emergency as that term is defined under the IAPA.

- In *Sleeth v. Illinois Department of Public Aid* (125 Ill. App. 3d 847, 466 N.E.2d 703, 81 Ill. Dec. 117 (1984)), the Third District Appellate Court considered an appeal from a DPA decision to terminate disability benefits in 5 cases. The court found that the procedure utilized by the Department (Manual Release No. 83.5), which required applicants who were denied disability benefits to submit proof of disability within 14 days after the filing of appeal, was a "rule" under the IAPA. The IAPA states:

  > "Rule" means each agency statement of general applicability that implements, applies, interprets, or prescribes law or policy, but does not include (i) statements concerning only the internal management of an Agency and not affecting private rights or procedures available to persons or entities outside the Agency, (ii) informal advisory rulings issued under Section 5-150, (iii) intra-agency memoranda, (iv) the prescription of standardized forms, or (v) documents prepared or filed or actions taken by the Legislative Reference Bureau under Section 5.04 of the Legislative Reference Bureau Act.

  DPA contended the Manual Release was merely an intra-office memorandum, not subject to the IAPA. The court reasoned that the memorandum affected private rights and procedures available to persons outside DPA and that this type of statement by an agency is specifically included within the definition of "rule" under the Act. Since the memorandum was not properly promulgated pursuant to the IAPA, the court held the rule invalid and determined that the procedures followed by DPA violated State law.

- In *Kaufman Grain Co., Inc. v. Director, Department of Agriculture* (179 Ill. App. 3d 1040, 534 N.E.2d 1259, 128 Ill. Dec. 654 (1989)), the Fourth District Appellate Court held that DOA had no statute or rule that allowed it to settle disputes between a grain producer and a grain dealer or a grain warehouse. DOA improperly relied on policy that was not properly promulgated as rules in accordance with the IAPA and, therefore, was without authority to adjudicate such grain disputes. The *Kaufman* case is significant for the ruling of the court concerning attorney's fees. Sec. 10-55 of

the IAPA provides that, in any case in which a party has any administrative rule invalidated by a court for any reason, the court shall award the party bringing the action the reasonable expenses of the litigation, including reasonable attorney's fees. The appellate court ruled that Kaufman was entitled to the award of attorney's fees it reasonably incurred in this litigation, including the fees incurred in the proceedings before the Department. The court stated that Sec. 10-55 of the IAPA gives those subject to regulation an incentive to oppose doubtful rules where compliance would otherwise be less costly than litigation. Therefore, the court awarded fees for the proceedings before DOA, as well as fees incurred in administrative review proceedings, noting that proceedings before an administrative agency are quite often more costly and time consuming than administrative review proceedings. The *Kaufman* case illustrated trends of the courts to rule unfavorably against agencies that have not promulgated their policies properly under the IAPA. The *Kaufman* decision specifically cites Senn Park and further strengthens the precedent it established. Award of attorney's fees was further strengthened in *Citizens Org. Proj. v. Dept. of Nat. Res.,* (89 Ill. 2nd 593, 725 N.E.2d 195, 244 Ill. Dec 896 (2000)), in which the Supreme Court affirmed the award of attorney's fees and litigation expenses where a citizen group obtained invalidation of a DNR rule governing a DNR permit decision.

- In *Coronet Insurance Company v. John E. Washburn, Director of Insurance of the State of Illinois* (201 Ill. App. 3d 633, 558 N.E.2d 1307, 146 Ill. Dec. 973 (1990)), the First District Appellate Court of Illinois held that an administrative agency may enact rules and regulations as limited by the authorizing statutory language; that an administrative rule carries with it the same presumption of validity as the statute; and a rule that is consistent with the spirit of the statute and furthers its purpose will be sustained. The appellate court also ruled that DOI's failure to give at least 45 days notice of a proposed rule to the general public did not constitute violation of the IAPA, since the Act provides that changes in the text of a proposed rule may be made during the First Notice period and that such changes need not be published again prior to submission to JCAR.

- In *CIPS v. Illinois Commerce Commission* (268 Ill. App. 3d 471, 644 N.E. 2d 817, 206 Ill. Dec. 49 (1994)), the Fourth District Appellate Court ruled that JCAR did not create an impermissible filing prohibition when it informed ICC it would lift its filing prohibition on a proposed rule formulating rental rates for cable TV attachments to utility poles if the ICC removed allocation of the portion of pole neutral space to cable television.

- In *Weyland v. Manning* (309 Ill. App. 3d 542, 723 N.E.2d 387, 243 Ill. Dec. 355 (2000)), plaintiffs filed an action contesting a rule adopted by the Department of Natural Resources establishing a restricted boating zone on Griswold Lake. One element at issue was the adequacy of the Second Notice filed by DNR with JCAR. The Second District Appellate Court held that DNR complied with JCAR rule requirements that it list and analyze all comments concerning the rule and that its failure to list in the Second Notice persons who had requested a public hearing did not invalidate the rule.

- Payday Lending Rules: The regulation of short term (payday or cash for car title) loans involved rules ultimately adopted by the Department of Financial Institutions and/or Office of Banks and Real Estate:

  After JCAR Objection and after a Filing Prohibition expired, DFI adopted rules regulating the payday loan/cash for car title industries that were immediately challenged in *South 51*

*Development Corp, et al., v. Vega* (335 Ill.App.3d 542, 269 N.E.2nd 528 (2002). The chief argument of plaintiffs was that there was an improper delegation of rulemaking authority to DFI. The court held that there was a valid delegation of legislative authority (the statute on which the rulemaking was based was somewhat sparse) and that the small business impact analysis performed at the time by DCEO (then DCCA) was facially sufficient, albeit not submitted to JCAR by the end of the first notice period.

- *Corey H. v. Board of Education of City of Chicago* (No. 92–C-3409, U.S. District Court for the Northern District of Illinois, Eastern Division). In 1992, disabled students brought an action against the Chicago Board of Education and State Board of Education alleging systemic failures to educate children with disabilities in the least restrictive environment (LRE), as required by the federal Individuals with Disabilities Education Act (IDEA). SBE and CBE entered into a settlement agreement with the plaintiffs. Under the settlement agreement, Judge Gettleman ordered SBE to change its policy on certification structure and standards for special education teachers through peremptory rulemaking. SBE filed 2 peremptory rulemakings to change special education teacher certification endorsement and create common core standards for all teachers. The first peremptory rule (titled Certification; 23 Ill. Adm. Code 25; 24 Ill. Reg. 16109) was objected to by JCAR on 11/14/00. SBE refused to withdraw the peremptory rule, stating it was not in a position to do so because it was under a federal judges order. The rule was then suspended by JCAR on 2/21/01. The second peremptory rule (Standards for Certification in Special Education; 23 Ill. Adm. Code 28; 24 Ill. Reg. 16738) was objected to and suspended by JCAR on 1/9/01. SBE did not respond. On 2/27/01, Judge Gettleman ordered SBE to implement both rulemakings, regardless of the JCAR suspensions.

  Pursuant to IAPA requirements, SJR 26 was introduced in the General Assembly to continue the 2 suspensions. (Sec. 5-125 of the IAPA states that if a joint resolution passes both houses of the General Assembly within the 180 days of the JCAR suspension, the rule will be considered repealed and the Secretary of State must immediately remove the rule from the collection of the effective rules.) SJR 26 passed the Senate on 5/21/01 with a vote of 56-0-0 and passed the House on 5/31/01 with a vote of 117-0-0. This was the first time a joint resolution of this nature has passed both houses of the GA. As directed by Judge Gettleman, SBE implemented the settlement order as agency policy outside rule.

  Downstate special education teachers and students then filed a motion to intervene, to allow them input into the teacher certification policies that will be effective statewide (*Reid L. v. Illinois State Board of Education and Corey H., No. 01-C-4180*). Judge Gettleman denied the Reid request. The U.S. Seventh Circuit Court of Appeals affirmed the district court. In the interim, the G.A. adopted PA 92-79 addressing many of these issues. Further litigation may result.

- In *Baker v. Adams et al.* (No. 02-CH-15962), the plaintiffs, James Baker and Roy Faust, among other things, requested that the court find Department of Human Services (DHS) Program Directive #02.01.01.020, governing the use of computers and related equipment in all DHS mental health and developmental disability (MH/DD) facilities, invalid because it was rule not properly promulgated according to the IAPA. The plaintiffs were Illinois residents currently confined at the Elgin Mental Health Center after being found not guilty by reason of insanity.

  The directive in part specifically stated that individuals in a forensic program were not allowed to possess modems. Any computers with modems were to be removed or disabled. Internet access

was allowed only through computers in the library or educational programs. The plaintiffs contended they were harmed as a result of not being allowed to communicate with others (e.g., friends, family and attorneys) via a computer (i.e., using a modem to access e-mail) and to order items off the Internet that required one giving an e-mail address. Additionally, Mr. Baker had been accepted into DePaul University's online undergraduate program, but was informed that since he lacked e-mail, he would not be able to participate in the program.

The court ruled the portion of the Program Directive prohibiting residents of any forensic program from possessing a modem was a rule promulgated in violation of the IAPA. The court also ruled invalid the provisions in the directive restricting the ability of recipients to freely send and receive computer disks. As a result, DHS adopted emergency rules, effective 12/26/04, to create a new Part governing the use of computers and related equipment in all DHS MH/DD facilities, thus codifying the former Program Directive into rule. A matching proposed rule was also proposed in early 2004.

## RECENT JUDICIAL ACTION AND LITIGATION

- *Gray v. Hartke, Kolaz and Department of Agriculture* (03MR374). In 2003, Illinois State Fair officials stripped Mongo (a 1,294 pound steer) of his championship title after learning that his owners had given him banned medicine to treat a sore hoof. The top prize was awarded to the runner-up.

  In February 2004, a Sangamon County Circuit judge ruled that the steer's disqualification should be reversed because fair officials failed to follow the proper procedure in setting out the rules for livestock competition (that premium book requirements be adopted as official rules). The Grays then filed an amended complaint, alleging a due process violation. Final briefs are due in late January.

  SB 3197/PA 93-1055, effective 11/23/04, requires DOA to make available premium books or other publications that establish the kinds and classes of events or exhibits, rules, conditions, instructions, directives, and requirements for contests at fairs. It makes these materials exempt from the IAPA's rulemaking procedures.

- In *Department of Professional Regulation of the State of Illinois v. AdoreAble Productions* (No. 04-CH-138), DPR requested a restraining order in the 17th Circuit Court (Winnebago County) attempting to prevent AdoreAble Productions from holding its Toughman event scheduled in Rockford, Illinois on February 27-28, 2004.

  DPR had adopted an emergency rule that banned ultimate fighting exhibitions, including competitions conducted under the titles Toughman Fighting, Extreme Fighting or Ultimate Fighting and other competitions that DPR determines to be violent and excessively and unacceptably dangerous. At its 2/04 meeting, JCAR objected to and suspended the rule because it included insufficient standards to be applied by DPR in determining that an event that purports to be a kickboxing event is actually an ultimate fighting event. Statute specifically exempted amateur and professional kickboxing events from DPR's authority to ban ultimate fighting events.

  AdoreAble Productions argued DPR did not have authority under the Professional Boxing Act [225 ILCS 105] to apply boxing regulations to kickboxing events, as specifically stated in statute. On

2/9/04, the judge dismissed the case on the defendant's request. On 2/24/04, following JCAR's 2/18/04 Objection/Suspension, DPR's request for restraining order to stop the 2/27-2/28/04 event was denied by Judge Ronald Pirrello.

In *Champaign-Urbana Public Health District vs. ILRB, AFSCME;* 4th Appellate Court, No. 4-03-1081 (2004), the 4th District appellate court ruled that ILRB's use of emergency rulemaking to implement its card recognition rules was not an emergency under the IAPA, despite the fact the agency was implementing a recently enacted PA with an immediate effective date. The court said no emergency existed because union recognition could still occur under the existing methods or the union could wait until the new permanent rules were promulgated:

> "(N)o facts have been presented to show that without the emergency rules the public would be confronted with a threatening situation. AFSCME's insinuation that chaos would reign if the Board was required to follow the general rule-making requirements of the Procedure Act is without merit and fails to establish a situation existed which reasonably constituted a threat to the public interest, safety or welfare. The reason for adopting an emergency rule 'should be truly emergent and persuasive to a reviewing court and considerations of administrative and fiscal convenience alone do not satisfy that standard. Agencies may not adopt emergency rules to eliminate an administrative need that does not threaten the public interest, safety, or welfare.' Here, the Board's reasoning for implementing the emergency rules can best be characterized as one for administrative convenience and not because of any stated public threat. Thus, the rules adopted by the Board...were invalid...."

In this instance, one court has taken a narrower view of the appropriate use of emergency rulemaking than the Committee's historical position. Implementation of a recently enacted Public Act by an agency may not now be appropriate action for an agency, barring other circumstances. Historically, the Committee has voted procedural Objections or Recommendations when agencies have employed emergency rulemaking to implement Public Acts after adequate time for regular rulemaking was present (the "agency created" emergency situation spoken of in *Senn Park*), but has not taken adverse action because an agency acted promptly to implement a recent Public Act through emergency rulemaking.

- In *DuPuy v. Samuels* (7/03), the U.S. District Court entered a preliminary injunction against DCFS requiring an expedited process for child care workers being investigated for child abuse/neglect. The injunction required, among other things, an administrator's teleconference and right to an expedited appeal. The injunction was appealed by DCFS to the 7th Circuit Court of Appeals. The appellate court ultimately affirmed the preliminary injunction. However, the 7th Circuit remanded the matter to the District Court to include in the definition of child care workers those individuals that are "career entrants", i.e., those who are acquiring the education/training necessary to be a child care worker. On 6/9/05, the District Court entered that order. Subsequently, the plaintiffs requested the District Court to order DCFS to promulgate rules implementing a policy adhering to the injunction. On 12/2/05, the court entered an order granting the plaintiff's motion. The District Court has set a bench trial for 7/24/06 on the merits of the case. DCFS adopted peremptory rules, effective 12/8/05, to comply with the injunction.

# FILING PROHIBITIONS AND SUSPENSIONS ISSUED BY JCAR

| DATE | AGENCY | PROH/SUSP | BASIS | ISSUE |
|---|---|---|---|---|
| 6/16/81 | Health Finance Authority<br>4 IR 1915 | Prohibition | Economic Impact/ Statutory Authority | Implements IHFA Act. Improper definition of "hospital services"; flawed reporting requirements; payor differentials; tries to establish a "contingent liability" agreement with the federal government. |
| 4/13/82 | EPA/DPH<br>4 IR 4669 | Prohibition | Economic Impact | Public water supply samples; land & water samples; new regs on milk & milk products. Inadequate economic impact analysis; burdensome requirements for wastewater testing laboratories |
| 1/8/86 | DNS<br>32 IAC 505<br>9 IR 1573 | Prohibition | Economic Impact/ Federal Preemption | Extensive and burdensome regulation of nuclear steam-generating facilities. |
| 9/23/87 | DPR<br>68 IAC 250<br>11 IAC 3836 | Prohibition | Legislative Intent/ Freedom of Speech/ Economic Impact | Limitation on pre-need solicitation and sale of funeral arrangements. |
| 3/7/90 | DPR<br>68 IAC 1400<br>13 IR 2913 | Prohibition | Economic Impact/ Statutory Authority | Requirements for clinical psychologist licensure conflicted with statute or lacked statutory authority |
| 9/17/91 | DCFS<br>89 IAC 300<br>15 IR 8735 | Prohibition | Statutory Authority/ Legislative Intent | Disallowed a statutorily required Christian Science exemption in the definition of "neglected child". |
| 1/8/92 | DOI<br>50 IAC 2008<br>15 IR 14859 | Prohibition | Economic Impact | Unlawful discrimination against the elderly by severely limiting the commission earned on the sale of Medicare supplement insurance policies, potentially restricting availability. |
| 1/8/92 | Aging<br>89 IAC 240<br>15 IR 17398 | Suspension | Economic Impact | Program cutbacks without adequate notification and protection of elderly clients. |
| 5/11/93 | OSFM<br>41 IAC 100<br>16 IR 15681 | Prohibition | Conflicting Regulations/Statutory Authority | Conflict between OSFM and DCFS on standards. |
| 9/14/93 | DOC<br>17 IAC 590 | Prohibition | Legislative Intent | Limits number of persons who can hunt geese from a single blind or pit to 3, without sufficient justification. |
| 10/12/93 | DPA<br>89 IAC 144,140<br>17 IR 15126<br>17 IR 15162 | 2 Suspensions | Statutory Authority/ Legislative Intent | Reduction in payments to facilities caring for DD clients, in contradiction of PA 88-88. |

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| 11/16/93 | DFI<br>38 IAC 130<br>17 IR 6929 | Prohibition | Economic Impact/<br>Legislative Intent | Unfair rate structure for cashing public aid checks. |
| 12/14/93 | ICC<br>83 IAC 315<br>93 IR 202 | Prohibition | Economic Impact/<br>Overburdensome<br>Regulation | Unfair rates paid by cable TV companies to utilities for use of pole space. |
| 9/13/94 | DPH<br>77 IAC 790<br>18 IR 3205,3202 | 2 Prohibitions<br>(New &<br>Repeal) | Statutory Authority/<br>Legislative Intent | Inclusion of drug products in the Ill. Drug Formulary that were not deemed equivalent by FDA or were exempt from FDA consideration. |
| 11/15/94 | DPA<br>89 IAC 140<br>18 IR 10922 | Suspension | Statutory Authority | Medicaid coverage of abortions in rape/incest cases conflicted with statute limiting coverage to endangerment of mother's life. |
| 2/7/95 | SBE<br>23 IAC 401<br>18 IR 9756 | Prohibition | Statutory Authority | Regulation of nonpublic special education facilities without statutory authority. |
| 4/18/95 | DASA<br>77 IAC 2090<br>19 IR 1156 | Prohibition | Statutory Authority/<br>Legislative<br>Intent/Due Process | Alcoholism/substance abuse centers applying for certification as Medicaid providers with deficiencies in treatment programs will have applications denied with no chance for remediation and no chance to appeal the denial. |
| 10/15/96 | ICC<br>83 IAC 761, 762,<br>763, 764<br>20 IR 8416,8407,<br>8393,8395,8527,<br>8541 | 4 Prohibitions<br>2 Suspensions<br>(83 IAC 761,<br>762, 763, 764) | Overburdensome<br>Regulation | Complex discovery procedures hinder ICC's ability to make an arbitration decision involving local telephone carriers and long distance carriers initiating local service within federal timeframes. |
| 3/18/97 | DNR<br>17 IAC 850<br>21 IR 322 | Prohibition | Economic Impact | Eliminating commercial perch fishing on Lake Michigan with have an undue economic impact on the regulated businesses. |
| 11/12/97 | DPH<br>77 IAC 290<br>21 IR 13908 | Suspension | Legislative Intent/<br>Adverse Impact on<br>Availability of<br>Adequate Health Care<br>Facilities | Health facility plan review is statutorily required only for construction projects over $5,000, not all projects. |
| 2/17/99 | SBEL<br>26 IAC 201,202<br>22 IR 7858,7862 | 2 Prohibitions | Statutory Authority/<br>Legislative Intent | Creates a system for staff review of nominating petitions for apparent conformity that is not consistent with statutory petition review procedures |
| 4/11/00 | ICC<br>83 IAC 726<br>24 IR 1 | Prohibition | Statutory Authority/<br>Economic Impact/<br>Undue Reg. Burden | Extends application of Enhanced 9-1-1 requirements to schools, governments and not-for-profits rather than the statutorily intended private businesses, corporations and industries. |

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| 6/13/00 | ICC<br>83 IAC 727<br>24 IR 8635E | Suspension | Statutory Authority/<br>Economic Impact | Extends application of Enhanced 9-1-1 requirements to schools, governments and not-for-profits rather than the statutorily intended private businesses, corporations and industries. |
| 11/29/00 | DFI<br>38 IAC 110<br>24 IR 11717 | Prohibition | Economic Impact | This attempt to regulate short-term (payday) loans and cash for title loans is unreasonably economic burden for small lenders, which could result in diminished availability of loans for consumers with limited options. |
| 1/9/01 | ICC<br>83 IAC 727<br>24 IR 8454 | Prohibition | Statutory Authority | Extends application of Enhanced 9-1-1 requirements to schools, governments and not-for-profits rather than the statutorily intended private businesses, corporations, and industries. |
| 1/9/01 | SBE<br>23 IAC 28<br>24 IR 16738 | Suspension | Economic Impact | Under these peremptory rules, teachers will not be as qualified to teach children with special needs as current rule provides. Also, teachers will need additional training, which could result in fewer qualified teachers available to serve special education students. |
| 2/21/01 | SBE<br>23 IAC 25<br>24 IR 16109 | Suspension | Economic Impact | Continued enforcement would constitute a serious threat to the welfare of special education students. Implementation may result in unqualified teachers being assigned to students for whom the teacher has no training or preparation. |
| 11/19/02 | DPA<br>89 IAC 120<br>26 IR 5047 | Prohibition | Statutory Authority<br>under federal law | Exceeds federal statutory authority by adding restrictions on determining whether an annuity was transferred at fair market value. |
| 11/18/03 | OBRE<br>38 IAC 375,<br>1000,1075<br>27 IR 16024,<br>16029,16043 | 3 Suspensions | No Legitimate<br>Emergency | Increases fees assessed on financial institutions without proving the existence of a situation meriting the use of emergency rulemaking. |
| 2/18/04 | DPR<br>68 IAC 1370<br>28 IR 1760 | Suspension | Lack of standards | Lacks sufficient standards to be applied in determining whether a purported kickboxing is actually an ultimate fighting event. (Amateur and professional kickboxing events are exempt from DPR's authority to ban ultimate fighting.) |
| 2/18/04 | ICC<br>92 IAC 1710<br>27 IR 8600 | Prohibition | Economic Impact | Increasing the amount a commercial relocator of trespassing vehicles is charged for filing relocation tow record forms and numbers, regardless of whether the relocator is reimbursed for the tow, may create an undue economic burden on these businesses, which may result in a decrease in relocator availability. |
| 7/13/04 | BHE<br>23 IAC 1020<br>28 IR 284 | Prohibition | Statutory Authority<br>/Policy Outside Rule | Statute specifies programs eligible for Health Service Education Grants and does not give BHE authority to further deny that eligibility. |
| 1/11/05 | DPH<br>77 IAC 860, 870,<br>870, 880, 885 | Prohibition | Threat to the Public<br>Interest | DPH failed to give all affected parties the opportunity to discuss the proposed rulemaking and potential amendments, creating a threat to the public interest. |

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| | 28 IR 1652, 1674, 2613, 1684, 1717 | | | |
| 6/14/05 | OSFM<br>41 IAC 220<br>29 IR 1101 | Prohibition | Statutory Authority | Numerous provisions conflicted with statute or lacked statutory authority. |

## HISTORY OF GENERAL RULEMAKING BY AGENCY
## 1978 THROUGH 2005

| AGENCY | 78 | 79 | 80 | 81 | 82 | 83 | 84 | 85 | 86 | 87 | 88 | 89 | 90 | 91 | 92 | 93 | 94 | 95 | 96 | 97 | 98 | 99 | 00 | 01 | 02 | 03 | 04 | 05 |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| Administrative Rules, Joint Committee on | 3 | 5 | 1 | 1 | 1 | - | - | - | 3 | 5 | - | - | - | - | 1 | 7 | 2 | - | - | - | - | - | - | - | - | - | - | - |
| Aging, Department on | 5 | 1 | 6 | 6 | 4 | 4 | 6 | 3 | 2 | 1 | 3 | 4 | 5 | 2 | 5 | 2 | 5 | 3 | 6 | 7 | 2 | 1 | 2 | 1 | 5 | - | 1 | 1 |
| Agriculture, Department of [16] | 14 | 21 | 14 | 16 | 24 | 18 | 41 | 15 | 11 | 26 | 21 | 16 | 7 | 2 | 18 | 17 | 13 | 22 | 15 | 14 | 17 | 18 | 7 | 13 | 13 | 11 | 13 | 5 |
| Attorney General | 3 | 1 | 2 | - | 3 | 2 | 3 | 2 | 2 | 2 | 3 | - | 1 | 1 | 1 | - | - | 1 | - | - | 3 | 2 | 3 | - | 2 | 1 | 1 | 3 |
| Attorney General's Ethics Commission | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | 1 | - | - | - | - |
| Auditor General | 7 | 5 | 2 | 1 | 4 | 1 | 3 | 1 | - | - | - | 1 | 2 | - | - | 1 | - | 2 | - | - | - | 3 | - | - | - | - | - | 2 |
| Banking Board of Illinois, State | - | - | - | - | - | - | - | - | - | - | 2 | - | - | - | - | - | - | - | - | - | 1 | - | - | - | - | - | - | - |
| Capital Development Board [29] | 2 | 1 | 3 | - | 3 | - | 2 | 9 | 4 | 6 | 3 | 2 | - | - | 2 | 1 | - | 2 | 11 | 8 | 6 | 2 | 7 | 8 | 1 | 3 | 2 | 2 |
| Carnival-Amusement Safety Board | - | - | - | - | - | - | - | - | 2 | 3 | - | 2 | 1 | - | 2 | 1 | 1 | - | - | 2 | - | 1 | - | 1 | - | 2 | - | 1 |
| Central Management Services, Dept. of [2] | 11 | 9 | 16 | 16 | 13 | 16 | 18 | 10 | 14 | 11 | 11 | 11 | 14 | 14 | 19 | 14 | 6 | 16 | 15 | 12 | 11 | 16 | 19 | 18 | 29 | 11 | 11 | 20 |
| Children & Family Services, Department of | 2 | 2 | 60 | 1 | 26 | 10 | 23 | 14 | 22 | 3 | 9 | 5 | 7 | 6 | 12 | 13 | 16 | 22 | 23 | 20 | 13 | 8 | 22 | 13 | 20 | 11 | 8 | 8 |
| Civil Service Commission | - | - | - | 2 | - | - | 2 | - | - | - | - | - | - | - | - | - | 1 | - | - | - | - | - | - | - | - | - | - | - |
| Civil Service System, State Universities | 2 | 2 | - | 3 | - | 1 | 2 | 1 | 1 | 1 | 2 | 1 | - | - | - | 1 | - | 1 | - | - | - | - | - | - | - | - | - | - |
| Commerce & Econ. Opport., Dept. of [15][23][25] | 1 | 1 | 3 | 1 | 8 | 4 | 20 | 29 | 31 | 18 | 17 | 17 | 19 | 16 | 13 | 8 | 7 | 4 | 5 | 3 | 4 | 5 | 8 | 7 | 7 | 1 | 10 | 4 |
| Commerce Commission | 17 | 11 | 19 | 10 | 21 | 19 | 43 | 22 | 20 | 86 | 24 | 26 | 14 | 16 | 16 | 16 | 16 | 10 | 10 | 14 | 12 | 6 | 15 | 16 | 25 | 40 | 10 | 22 |
| Community College Board | - | 1 | - | - | 1 | 2 | 3 | 2 | 2 | 2 | 5 | 5 | 3 | 2 | 3 | 2 | 4 | - | 5 | 2 | - | 3 | 1 | 1 | 2 | - | 2 | 1 |
| Comprehensive Health Insurance Plan | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - |
| Comptroller | 1 | 2 | 4 | 3 | 4 | 4 | 3 | 1 | 5 | 3 | 4 | 2 | 2 | - | 1 | 2 | 3 | - | 1 | 2 | 1 | 1 | 3 | 3 | 3 | 1 | - | - |
| Comptroller's Merit Commission | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | 1 | 1 | - | - | - | - | - | - | - | - | - | - |
| Cook County Local Records Commission | - | - | - | - | - | - | - | - | 1 | - | - | 1 | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - |
| Corrections, Department of | 82 | 23 | 38 | 24 | 15 | 66 | - | 1 | 10 | 8 | 5 | 8 | 7 | 4 | 5 | 6 | - | 4 | 4 | 6 | 4 | 1 | - | 2 | 4 | - | 4 | 3 |
| Court of Claims | - | - | - | - | - | - | 1 | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | 1 | - | - | - | - | - |
| CPA Board of Examiners | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | 1 | - | 1 | - | - | - | - | - | 1 | 1 | - |
| Criminal Justice Information Authority | 1 | 2 | - | - | - | - | - | 1 | 1 | 2 | - | 1 | 2 | - | 2 | 2 | - | - | 1 | 1 | 1 | - | 1 | 4 | - | - | 1 | - |
| Deaf and Hard of Hearing Commission | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | 1 | - | - | - |
| Debt Collection Board | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | 1 | - | - | - | - | 2 | - | - | - |
| Planning Council on Developmental Disabilities | - | - | - | - | - | - | - | - | - | - | - | - | - | - | 2 | - | - | - | - | - | - | - | - | - | - | - | - | - |
| Drycleaners Environmental Response Trust Fund | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | 2 | - | - | - | 1 | 1 |
| Eastern Illinois University | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - |
| Education, State Board of | 3 | 4 | 9 | 8 | 3 | 7 | 5 | 12 | 30 | 12 | 9 | 10 | 10 | 5 | 9 | 10 | 10 | 10 | 7 | 6 | 18 | 14 | 4 | 22 | 14 | 8 | 16 | 50 |
| Educational Labor Relations Board | - | - | - | - | - | - | 4 | 3 | - | - | 2 | 5 | - | - | 2 | - | - | - | - | - | - | - | - | 1 | - | - | 10 | - |
| Educational Opportunity, Consortium for | - | - | - | - | - | - | - | - | 1 | - | - | - | 2 | 1 | - | - | - | - | - | - | - | - | - | - | - | - | - | - |
| Elections, State Board of | 6 | 1 | 8 | 3 | 7 | 3 | 4 | 1 | - | 3 | - | 7 | 3 | 2 | - | 2 | 1 | 1 | 2 | 5 | 5 | 6 | 1 | - | 2 | 4 | 5 | 7 |
| Elevator Safety Review Board | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | 1 |
| Emergency Management Agency [3][24] | - | - | 1 | 4 | 12 | 10 | 4 | 3 | 22 | 9 | 9 | 8 | 8 | 3 | 12 | 19 | 8 | 5 | 11 | 6 | 12 | 8 | 5 | 10 | 8 | 5 | 3 | 9 |
| Employment Security, Department of | - | - | - | - | - | - | 3 | 13 | 10 | 5 | 19 | 16 | 11 | 14 | 8 | 13 | 8 | 3 | 2 | 5 | 1 | 1 | 4 | 2 | 1 | 2 | 5 | 4 |
| Environmental Protection Agency | 7 | 12 | 10 | 16 | 18 | 20 | 21 | 10 | 8 | 14 | 16 | 8 | 6 | 4 | 14 | 4 | 3 | 6 | 5 | 11 | 6 | 5 | 7 | 8 | 3 | 3 | 1 | 3 |
| Ethics, Board of | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - |

# HISTORY OF GENERAL RULEMAKING BY AGENCY
## 1978 THROUGH 2005

| AGENCY | 78 | 79 | 80 | 81 | 82 | 83 | 84 | 85 | 86 | 87 | 88 | 89 | 90 | 91 | 92 | 93 | 94 | 95 | 96 | 97 | 98 | 99 | 00 | 01 | 02 | 03 | 04 | 05 |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| Executive Ethics Commission [33] | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | 1 | - | - | - | - | 2 |
| Experimental Organ Transplantation Proced. Bd | - | - | - | - | - | - | - | 1 | 1 | - | 1 | 1 | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - |
| Export Development Authority | - | - | - | - | - | - | - | 1 | 1 | 1 | 1 | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - |
| Financial and Professional Regulation [28] | 30 | 41 | 53 | 38 | 36 | 23 | 61 | 32 | 30 | 32 | 40 | 34 | 27 | 38 | 41 | 39 | 29 | 43 | 42 | 45 | 61 | 45 | 55 | 29 | 51 | 59 | 32 | 43 |
| Finance Authority [30] | 5 | 2 | 1 | 1 | 2 | 3 | 4 | 2 | 10 | 6 | 2 | 1 | 3 | - | 4 | 3 | 1 | 1 | 5 | 2 | 1 | 2 | 2 | 2 | - | 1 | - | - |
| Fire Marshal | 1 | 2 | 1 | 1 | 7 | 3 | 5 | 3 | 3 | 5 | 1 | 4 | 4 | 5 | 6 | 1 | 3 | 6 | 5 | 5 | 6 | - | 3 | 3 | 6 | 3 | 2 | 3 |
| Gaming Board | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | 2 | 1 | 3 | 2 | 1 | 2 | 2 | 2 | 3 | 3 |
| Governor | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | 1 | 1 | - | - | - | - | - | - |
| Guardianship & Advocacy Commission | - | - | 2 | 1 | 2 | 2 | 1 | 3 | - | - | - | - | 1 | - | 1 | - | - | - | - | - | - | - | 6 | - | 1 | - | - | - |
| Healthcare and Family Services, Department of [31] | 46 | 56 | 47 | 66 | 40 | 86 | 67 | 94 | 82 | 87 | 107 | 67 | 94 | 78 | 84 | 65 | 43 | 75 | 53 | 39 | 30 | 19 | 23 | 30 | 43 | 32 | 30 | 37 |
| Health Facilities Planning Board | - | 1 | - | - | - | - | 2 | 1 | 9 | 3 | 3 | 7 | - | 3 | 4 | 5 | 4 | 1 | 2 | 5 | 3 | 7 | 14 | 3 | 4 | - | - | 4 |
| Hearing Aid Consumer Protection Board | - | - | - | - | - | - | - | - | - | 1 | - | 1 | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - |
| Higher Education CPO | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | 2 | - | - | - | - | - | - | - |
| Higher Education, Board of | - | 3 | 2 | 5 | - | - | 20 | 5 | 3 | - | 1 | 6 | - | - | 1 | 1 | 1 | - | - | - | 1 | 4 | - | - | - | - | 1 | 2 |
| Historic Preservation Agency | - | - | - | - | - | - | - | - | - | - | - | - | 1 | 2 | 2 | - | - | - | 1 | 1 | - | - | 1 | - | 1 | - | - | - |
| Housing Development Authority | - | - | 1 | - | - | 3 | 3 | 5 | 1 | 1 | 1 | 1 | 3 | 2 | 5 | 1 | 3 | 1 | - | 9 | 3 | 2 | 1 | 3 | 1 | 1 | - | 1 |
| Human Rights Commission [17] | 2 | 3 | - | 1 | 1 | 2 | 2 | - | 1 | - | - | - | - | - | - | - | - | - | 1 | 1 | - | - | - | - | - | - | - | - |
| Human Rights, Department of | - | - | 1 | 5 | 4 | 3 | 1 | - | 1 | - | - | - | - | - | 1 | 1 | 3 | 1 | 1 | 2 | 1 | 1 | 1 | 1 | 2 | - | 2 | 2 |
| Human Services, Department of [11] [1][18] | 23 | 15 | 12 | 13 | 12 | 29 | 37 | 26 | 65 | 51 | 34 | 30 | 40 | 30 | 25 | 34 | 27 | 27 | 38 | 24 | 106 | 69 | 46 | 39 | 34 | 36 | 32 | 15 |
| Illinois State Universtiy | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - |
| Indepenent Higher Ed Loan Authority | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - |
| Investments. Illinois State Board of | - | 3 | 1 | - | 1 | 2 | - | - | - | - | - | 1 | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - |
| Labor Relations Board [22] | - | - | - | - | - | - | 8 | 2 | 16 | - | 8 | - | 8 | - | - | 4 | - | - | 5 | - | - | - | - | - | 4 | 2 | 2 | - |
| Labor, Department of | 5 | 6 | 3 | 7 | 8 | 8 | 5 | 3 | 3 | 1 | 2 | 1 | 3 | 2 | 9 | - | 1 | 4 | 2 | 3 | 1 | 1 | 12 | 3 | - | - | 4 | 9 |
| Law Enforcement Training Standards Bd. [20] | - | - | - | - | - | 4 | 1 | - | 2 | 1 | - | 2 | 2 | 1 | 1 | - | - | 1 | - | - | 1 | - | - | - | - | - | 1 | 1 |
| Legislative Information System | 1 | - | 2 | - | 2 | 1 | - | - | - | - | - | - | 1 | - | - | - | - | - | - | - | - | - | 2 | - | - | - | - | - |
| Legislative Space Needs Commission | - | - | - | - | - | - | - | - | - | - | - | - | - | - | 2 | - | - | - | - | - | - | - | - | - | - | - | - | - |
| Lieutenant Governor | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | 1 | 1 | - | - | - | 1 | 1 | - | - | 1 | - | - | - |
| Liquor Control Commission | 2 | - | - | - | - | 1 | - | - | - | - | 1 | - | - | - | - | 1 | - | 1 | - | 1 | 1 | 3 | - | 2 | 2 | - | - | - |
| Local Records Commission | - | 1 | - | - | - | - | - | - | - | - | - | - | - | 1 | - | - | - | - | - | - | - | - | - | - | - | - | - | - |
| Low-Level Radioactive Waste Task Group | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - |
| Medical Center Commission | - | 1 | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - |
| Military Affairs, Department of [5] | - | - | - | - | - | - | - | 1 | - | - | 2 | - | - | - | - | - | - | - | - | - | - | - | - | - | - | 1 | 1 | - |
| Motor Vehicle Theft Prevention Council | - | - | - | - | - | - | - | - | - | - | - | - | - | - | 2 | 2 | - | - | - | - | - | - | - | - | - | - | - | - |
| Natural Resources, Department of [10] | 80 | 93 | 81 | 116 | 41 | 41 | 41 | 44 | 84 | 36 | 24 | 58 | 48 | 60 | 73 | 34 | 25 | 55 | 31 | 35 | 60 | 40 | 25 | 52 | 45 | 32 | 47 | 35 |
| Nature Preserves Commission | - | - | - | - | - | 1 | - | - | - | - | - | - | - | - | - | 1 | 1 | - | - | - | - | - | - | - | - | - | - | - |
| Northeastern Illinois Planning Commission | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | 1 | - | - | 1 | - | - | 1 | - | - | - | - | - |
| Obsolete Boards & Commissions | 10 | 4 | 5 | 15 | 2 | - | - | 10 | 2 | 3 | 3 | 1 | 1 | 3 | 3 | 3 | 2 | 5 | - | 3 | - | - | 5 | - | - | - | - | - |

## HISTORY OF GENERAL RULEMAKING BY AGENCY
## 1978 THROUGH 2005

| AGENCY | 78 | 79 | 80 | 81 | 82 | 83 | 84 | 85 | 86 | 87 | 88 | 89 | 90 | 91 | 92 | 93 | 94 | 95 | 96 | 97 | 98 | 99 | 00 | 01 | 02 | 03 | 04 | 05 |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| Obsbolete Higher Ed Boards (BOR, BOG) [13] | - | - | - | 2 | 2 | 1 | - | 1 | - | - | 1 | 3 | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - |
| Pollution Control Board | 18 | 11 | 18 | 13 | 18 | 23 | 21 | 32 | 43 | 53 | 73 | 71 | 54 | 36 | 29 | 24 | 66 | 11 | 34 | 31 | 17 | 7 | 30 | 12 | 17 | 9 | 20 | 18 |
| Prisoner Review Board | 2 | - | - | - | 1 | - | - | 1 | - | - | 2 | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | 1 |
| Procurement Policy Board | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | 3 | - | 2 | - | - | - | - |
| Property Tax Appeal Board | - | - | - | - | - | - | - | 1 | - | - | - | 1 | - | - | - | - | - | - | 1 | 3 | 1 | 1 | - | - | - | - | - | 5 |
| Public Health, Department of [21] | 42 | 43 | 55 | 44 | 92 | 91 | 53 | 25 | 44 | 27 | 50 | 45 | 48 | 28 | 46 | 53 | 28 | 29 | 30 | 46 | 38 | 18 | 41 | 30 | 35 | 44 | 18 | 30 |
| Purchased Care Review Board [27] | 1 | 6 | 2 | 1 | - | 1 | 1 | 1 | - | 1 | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | 1 | - | - |
| Racing Board | 10 | 14 | 19 | 10 | 22 | 9 | 7 | 13 | 14 | 9 | 11 | 5 | 40 | 17 | 20 | 25 | 27 | 37 | 16 | 23 | 4 | 4 | 17 | 20 | 16 | 6 | 15 | 22 |
| Records Commission, State | - | - | - | - | - | - | - | - | - | - | - | 1 | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - |
| Retirement System, General Assembly | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - |
| Retirement System, Judges | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - |
| Retirement System, State Employees' | 2 | 3 | 5 | 3 | 4 | 1 | 2 | 3 | - | - | 1 | - | 2 | 1 | 1 | - | - | - | 1 | 2 | 2 | 1 | 2 | 1 | 1 | - | 2 | 1 |
| Retirement System, State Universities | 1 | - | - | - | - | 1 | - | - | - | - | - | 1 | 1 | - | - | - | - | - | 1 | 3 | - | 2 | - | 1 | - | 2 | 2 | 8 |
| Retirement System, Teachers' | 2 | - | - | - | - | - | - | 2 | - | - | 1 | - | 1 | 1 | 2 | 1 | 1 | 1 | 1 | 2 | 5 | 1 | 2 | 1 | 3 | 1 | 2 | 3 |
| Revenue, Department of [26] | 11 | 18 | 24 | 45 | 14 | 11 | 9 | 7 | 26 | 19 | 22 | 24 | 35 | 25 | 12 | 20 | 22 | 22 | 33 | 12 | 24 | 11 | 78 | 52 | 41 | 18 | 23 | 11 |
| Savings Institutions, Board of [12] | - | - | - | - | - | - | - | - | - | - | - | - | - | 2 | - | - | - | - | - | 1 | - | - | - | - | - | - | - | - |
| Secretary of State | 15 | 21 | 12 | 26 | 14 | 31 | 20 | 19 | 8 | 18 | 30 | 31 | 21 | 14 | 13 | 21 | 13 | 14 | 21 | 27 | 16 | 10 | 14 | 13 | 26 | 7 | 17 | 24 |
| Secretary of State's Merit Commission | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - |
| Sex Offender Management Board | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | 2 | - | 2 | 1 |
| Southern Illinois University Board of Trustees | - | - | - | - | - | - | - | - | - | - | - | 1 | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - |
| Specialized Care for Children, Division of | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | 1 | - | 1 | 1 | - | - | - | - | - |
| Sports Facilities Authority | - | - | - | - | - | - | - | - | - | - | 2 | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - |
| State Historical Library | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - |
| State Mandates Board of Appeals | - | - | - | - | 1 | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - |
| State Police Merit Board [8] | 2 | 2 | 1 | - | 1 | 1 | 4 | 1 | 2 | 2 | 2 | 2 | - | 1 | 2 | 1 | 1 | 1 | 2 | 3 | 1 | 1 | 1 | 1 | 3 | 1 | 1 | - |
| State Police, Department of [14] | 2 | - | 1 | - | 1 | 2 | 2 | 1 | 2 | 1 | 4 | - | 2 | 1 | 3 | 2 | - | 1 | 4 | 2 | 4 | - | 4 | 5 | 3 | 6 | 3 | 1 |
| State's Attorneys Appellate Prosecutor [4] | 1 | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - |
| Student Assistance Commission [9] | 1 | 3 | 4 | 11 | 4 | 2 | 1 | 14 | 10 | 13 | 5 | 9 | 1 | 5 | 10 | 15 | 13 | 8 | 19 | 35 | 15 | 8 | 15 | 10 | 8 | 15 | 9 | 10 |
| Toll Highway Authority, Illinois State | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | 2 | - | - | 1 | 1 | - | 1 | 2 | - | 1 | 1 | 1 | 3 |
| Transportation, Department of [10] | 13 | 13 | 13 | 17 | 5 | 5 | 10 | 16 | 23 | 16 | 25 | 18 | 15 | 32 | 21 | 28 | 18 | 22 | 12 | 13 | 23 | 17 | 19 | 16 | 22 | 14 | 22 | 15 |
| Travel Control Board, Governor's | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | 1 | - | - | - | - | - | - | - |
| Travel Control Board, Higher Education | - | 1 | 1 | 1 | 2 | - | - | 1 | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - |
| Travel Control Board, Legislative | 1 | 1 | - | 1 | - | - | - | - | - | - | - | - | - | - | - | - | - | - | 1 | - | - | - | - | - | - | - | - | - |
| Travel Regulation Council | - | - | - | - | - | - | - | - | - | - | 1 | - | - | - | - | - | - | - | - | - | - | - | - | - | - | 1 | - | - |
| Treasurer | 1 | 1 | - | - | - | 1 | 1 | - | - | - | - | 4 | - | 2 | 5 | 7 | - | - | - | - | 4 | - | 3 | 2 | 2 | - | - | 4 |
| University of Illinois, Board of Trustees | - | - | - | 1 | - | 1 | 1 | 1 | 1 | - | 2 | 2 | - | - | 1 | 1 | 1 | 1 | - | 4 | - | - | 1 | - | - | - | - | - |

# HISTORY OF GENERAL RULEMAKING BY AGENCY
# 1978 THROUGH 2005

| AGENCY | 78 | 79 | 80 | 81 | 82 | 83 | 84 | 85 | 86 | 87 | 88 | 89 | 90 | 91 | 92 | 93 | 94 | 95 | 96 | 97 | 98 | 99 | 00 | 01 | 02 | 03 | 04 | 05 |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| Veterans' Affairs, Department of | 1 | 2 | 2 | 2 | - | 1 | 1 | - | 5 | 7 | - | - | - | - | 5 | - | - | 1 | - | - | - | - | 12 | 1 | 1 | - | - | - |
| Workers' Compensation Commission [32] | 4 | 1 | 3 | 2 | 3 | 1 | 2 | 7 | 2 | - | - | - | 6 | 1 | 2 | - | - | 4 | - | - | - | - | - | - | - | - | - | - |
| (Workers' Comp) Commission Review Bd [32] | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - |
| **TOTALS** | **498** | **474** | **565** | **561** | **506** | **581** | **602** | **525** | **694** | **614** | **627** | **589** | **580** | **482** | **581** | **537** | **440** | **483** | **488** | **512** | **554** | **384** | **553** | **467** | **520** | **399** | **399** | **461** |

**This table illustrates the number of rulemakings commenced by each agency during the calendar year.**

[1] DASA, once a division of Dangerous Drugs Commission, became a separate agency in 1984. [2] The Depts. of Personnel and Administrative Services were combined in 1982 and the name was changed to Dept. of Central Management Services. [3] Includes Emergency Services & Disaster Agency, which was renamed IEMA in 1992. [4] Includes State's Attorneys Appellate Service Commission. [5] The Military & Naval Department became the Department of Military Affairs in 1988. [6] The Department of Registration & Education became DPR in 1988. [7] Commissioner of Savings & Loan Associations became the Commissioner of Savings & Residential Finance in 1990 and combined with the Commissioner of Banks and Trusts to become the Commissioner of Banks and Real Estate in 1996. The new office also absorbed the real estate licensing functions of DPR. [8] Until 1986, the Dept of Law Enforcement Merit Board. [9] The State Scholarship Commission became ISAC in 1989. [10] In 1995, DOC, ENR (previously, Institute of Natural Resources), M&M, AMLRC, and DOT Waterways Division were merged into the Department of Natural Resources. [11] July 1997, DHS was formed from DASA, DORS, DMHDD, and specific programs from DPA and DPH. [12] In 1996, the Savings and Loan Adivsory Board became the Board of Savings Institutions. [13] In 1996, the Board of Regents/Governors were disbanded in favor of individual boards of trustees. Also includes obsolete Trustees of State CC of E. St. L. [14] Prior to 1985, Department of Law Enforcement. [15] Prior to 1979, Department of Local Government Affairs. [16] Includes State Fair Agency (prior to 1979). [17] Absorbed Fair Employment Practices Commission in 1980. [18] In 1984, the Dangerous Drugs Commission was absorbed by DASA, which was then absorbed by DHS in 1997. [19] IEFA absorbed the Higher Education Loan Authority in c. 1988. [20] In 1993, the Local Gov. Law Enforcement Officers Training Board was renamed the Law EnforcementTranining & Standards Board. [21] HCCC absorbed Health Finance Authority (1979-82) duties in 1984. HCCC was abolished in 2002 and its duites taken by DPH. [22] In 2000, the Local Labor Relations and State Labor Relations Boards were combined into the Illinois Labor Relations Board. [23] In 2003, DCCA became DCEO. [24] In 2003, DNS was absorbed by IEMA. [25] In 2003, Prairie State 2000 Auth. was transferred to DCEO [26] In 2003, Department of the Lottery was transferred to Revenue [27] The Governor's Purchased Care Review Board became the Purchased Care Review Board when it moved into SBE in 1996. [28] In 2004, the Departments of Insurance, Professional Regulation and Financial Institutions and the Office of Banks and Real Estate were combined into the Department of Financial and Professional Regulation. [29] Illinois Building Commission was absorbed by the Capital Development Board 7/1/04. [30] The Illinois Finance Authority absorbed Illinois Development Finance Authority, Illinois Farm Development Authority, Illinois Health Facilities Authority, Illinois Research Park Authority, Illinois Rural Bond Bank, Illinois Educational Facilities Authority and the Illinois Community Development Finance Corporation 1/1/04. [31] 7/1/05, the name of the Department of Public Aid was changed to the Department of Healthcare and Family Services. [32] On 1/1/05, the name of the Illinois Industrial Commission was changed to the Illinois Workers' Compensation Commission. [33] On 1/1/99, PA 90-737 repealed the Governor's Ethics Commission and replaced it with the Executive Ethics Commission

# HISTORY OF EMERGENCY RULEMAKING BY AGENCY
## 1978 THROUGH 2004

| AGENCY | 78 | 79 | 80 | 81 | 82 | 83 | 84 | 85 | 86 | 87 | 88 | 89 | 90 | 91 | 92 | 93 | 94 | 95 | 96 | 97 | 98 | 99 | 00 | 01 | 02 | 03 | 04 | 05 |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| Administrative Rules, Joint Committee on | 1 | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - |
| Aging, Department on | 4 | 1 | 1 | 1 | 1 | - | - | - | - | - | - | 1 | - | 3 | 5 | 1 | 1 | 2 | 1 | - | - | - | - | - | 1 | - | 1 | - |
| Agriculture, Department of [16] | 1 | 3 | 2 | - | - | - | 1 | 2 | 1 | 1 | 2 | 1 | - | 1 | - | 3 | 1 | 1 | 1 | - | 1 | - | 3 | 1 | 2 | 5 | 1 | - |
| Attorney General | - | - | - | - | - | - | - | 1 | - | - | - | - | - | - | - | - | - | - | - | - | 1 | - | - | - | - | - | 1 | 1 |
| Banking Board of Illinois, State | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | 1 | - | - | - | - | - | - | - | - | - | - |
| Capital Development Board [29] | - | - | 2 | - | - | - | - | 1 | - | - | - | - | - | - | - | - | - | - | - | 1 | 3 | 2 | - | - | - | - | 1 | 2 |
| Carnival-Amusement Safety Board | - | - | - | - | - | - | - | - | 1 | - | - | 1 | 1 | - | 1 | - | - | - | - | - | - | - | - | - | - | - | - | - |
| Central Management Services, Department of [2] | 9 | 5 | 4 | 3 | 5 | 3 | 13 | 6 | 6 | 4 | 8 | 3 | 4 | 3 | 7 | - | 2 | 1 | 8 | 4 | 6 | 6 | 4 | 3 | 7 | 3 | 5 | 6 |
| Children & Family Services, Department of | - | - | 2 | - | 4 | 1 | - | - | 1 | 1 | - | - | 2 | 4 | 1 | 2 | 4 | 6 | - | 7 | 1 | 1 | 5 | 4 | 3 | - | 2 | 1 |
| Commerce & Economic Opport., Dept. of [15][23][26] | 1 | - | - | - | - | - | - | 6 | 7 | 2 | 1 | 8 | 2 | 2 | 2 | 3 | - | - | - | 1 | 1 | 2 | 4 | 2 | 1 | 2 | 1 | 6 |
| Commerce Commission | 1 | 1 | 5 | - | 2 | 5 | 3 | 1 | 5 | 3 | 4 | 2 | - | 1 | 1 | - | 2 | - | 2 | 4 | 6 | - | 8 | 5 | 1 | 2 | 1 | 1 |
| Community College Board | - | - | - | - | - | 1 | 2 | - | - | - | - | - | 1 | - | - | - | - | - | - | - | - | - | - | 1 | - | - | - | - |
| Comptroller | - | 2 | 1 | - | - | - | - | - | - | - | - | - | - | - | - | 1 | 1 | - | - | - | 1 | - | 1 | - | 1 | - | - | - |
| Corrections, Department of | 21 | 8 | 4 | 2 | 15 | - | - | - | - | - | - | - | 3 | - | 1 | 4 | - | - | 1 | 4 | - | - | - | - | - | - | 1 | 1 |
| CPA Board of Examiners | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | 1 | - |
| Criminal Justice Information Authority | - | 2 | - | - | - | - | - | 1 | - | 1 | - | 1 | - | - | - | - | - | - | 1 | 1 | 1 | - | 1 | - | - | - | - | - |
| Dangerous Drugs Advisory Council | - | - | 1 | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - |
| Dry Cleaners Emergency Response Trust Fund | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | 2 | - | - | - | - | - |
| Education, State Board of | 2 | - | 3 | 1 | - | 3 | - | 9 | 5 | 2 | - | 2 | 2 | - | - | - | 1 | 1 | 2 | - | 8 | 1 | 2 | 2 | - | 1 | 3 | 3 |
| Educational Labor Relations Board | - | - | - | - | - | - | 4 | 1 | - | - | 1 | 1 | - | - | 1 | - | - | - | - | - | - | - | - | - | - | - | 2 | - |
| Educational Opportunity, Consortium For | - | - | - | - | - | - | - | - | 1 | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - |
| Elections, State Board of | 3 | 1 | 4 | 1 | 2 | 1 | 2 | - | - | - | - | - | 1 | - | - | 1 | - | 1 | 1 | - | 1 | 2 | 1 | - | - | - | 2 | 3 |
| Emergency Management Agency [3][25] | - | - | - | - | 2 | - | 2 | 1 | 1 | 2 | - | - | - | - | - | 2 | 1 | 2 | 1 | 1 | 6 | - | - | 2 | 2 | - | - | - |
| Employment Security, Department of | - | - | - | - | - | - | 3 | - | - | - | 4 | 5 | 1 | - | 2 | 2 | 2 | 1 | - | - | - | - | 1 | 1 | - | - | - | 2 |
| Environmental Protection Agency | 2 | 3 | 3 | 2 | - | - | 2 | 2 | 2 | 3 | - | 1 | - | - | 1 | - | - | 1 | - | 2 | - | - | - | - | - | - | - | - |
| Executive Ethics Commission [33] | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | 2 |
| Experimental Organ Transplantation Proced. Bd. | - | - | - | - | - | - | - | 1 | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - |
| Export Development Authority | - | - | - | - | - | - | - | - | 1 | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - |
| Financial and Professional Regulation | 5 | 5 | 12 | 6 | 8 | 8 | 6 | 4 | 10 | 5 | 6 | 7 | 2 | 6 | 7 | 7 | 1 | 6 | 2 | 7 | 11 | 3 | 15 | 4 | 8 | 11 | 5 | 2 |
| Finance Authority | - | 1 | - | - | 1 | 1 | 1 | 2 | 5 | - | - | - | 3 | - | 1 | - | - | - | - | - | - | 2 | - | - | - | - | - | - |
| Fire Marshal | - | 1 | 1 | - | 2 | 1 | 2 | - | 2 | - | - | 3 | 1 | - | - | 2 | - | - | - | - | 1 | - | - | - | - | 2 | - | - |
| Gaming Board | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | 1 | 1 | 1 | 1 | - | - | 1 | 1 | 1 | 1 |
| Governor | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | 1 | - | - | - | - | - | - | - |
| Guardianship and Advocacy Commission | - | 1 | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - |
| Healthcare and Family Services, Department of [31] | 19 | 14 | 4 | 3 | 4 | 2 | 6 | 6 | 9 | 18 | 17 | 15 | 18 | 19 | 27 | 17 | 6 | 29 | 15 | 22 | 13 | 10 | 6 | 10 | 25 | 16 | 20 | 20 |
| Health Coordinating Council, Statewide | 3 | - | - | 1 | - | - | - | - | - | - | - | - | - | - | 2 | - | - | - | - | - | - | - | - | - | - | - | - | - |
| Health Facilities Planning Board | - | - | - | - | - | - | - | - | - | - | - | - | - | - | 4 | 1 | - | 2 | - | 1 | - | 1 | - | - | - | - | - | - |
| Higher Education CPO | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | 2 | - | - | - | - | - | - | - |

# HISTORY OF EMERGENCY RULEMAKING BY AGENCY
## 1978 THROUGH 2004

| AGENCY | 78 | 79 | 80 | 81 | 82 | 83 | 84 | 85 | 86 | 87 | 88 | 89 | 90 | 91 | 92 | 93 | 94 | 95 | 96 | 97 | 98 | 99 | 00 | 01 | 02 | 03 | 04 | 05 |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| Higher Education Loan Authority, Independent | - | - | - | - | - | 1 | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - |
| Higher Education, Board of | - | 1 | - | 1 | - | - | 1 | - | - | - | - | 1 | - | - | - | - | - | - | - | - | - | 2 | - | - | - | - | - | 1 |
| Housing Development Authority | - | - | - | - | - | 1 | 1 | 1 | - | 1 | - | - | 3 | - | 2 | 1 | 2 | 1 | - | 3 | - | - | 1 | 1 | 1 | 1 | - | - |
| Human Rights Commission [17] | 1 | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | 1 | - | - | - | - | - | - | - | - | - |
| Human Rights, Department of | - | - | 1 | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | 2 | - | - | - | - | - | - | - | - | - |
| Human Services, Department of [11][1] | 1 | 1 | - | 1 | 3 | 1 | 1 | 1 | 5 | 1 | 1 | 4 | 2 | 3 | 14 | 31 | 1 | 3 | 2 | 8 | 22 | 29 | 16 | 9 | 5 | 1 | 8 | 3 |
| Investments, Illinois State Board of | - | 1 | - | - | - | - | - | - | - | - | - | 1 | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - |
| Labor Relations Board | - | - | - | - | - | - | 8 | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | 2 | 2 | - |
| Labor, Department of | - | - | 1 | 3 | - | 3 | 3 | 2 | - | - | - | - | 1 | 1 | - | 1 | 1 | - | - | - | - | - | 1 | - | - | - | 3 | 1 |
| Legislative Information System | 1 | - | 1 | - | 1 | 1 | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - |
| Lieutenant Governor | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | 1 | - | - | - | - | - | - | - |
| Liquor Control Commission | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | 1 | - | - | - | - | - | - |
| Law Enforcement Training Standards Board | - | - | - | - | - | 1 | - | - | 1 | - | - | - | - | - | 1 | - | - | - | - | - | - | - | - | - | - | - | 1 | 1 |
| Medical Center Commission | - | 1 | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - |
| Military Affairs, Department of [24] | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | 1 | 1 | - |
| Motor Vehicle Theft Prevention Council | - | - | - | - | - | - | - | - | - | - | - | - | - | 1 | 1 | - | - | - | - | - | - | - | - | - | - | - | - | - |
| Natural Resources, Department of [10] | 21 | 18 | 14 | 14 | 6 | 5 | 1 | 7 | 4 | 1 | 7 | 6 | 3 | 6 | 6 | 5 | 6 | 4 | - | 1 | 4 | 5 | 1 | 5 | 4 | 1 | 2 | 4 |
| Obsolete Boards & Commissions | 4 | 1 | - | - | - | - | - | - | 1 | 1 | 2 | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - |
| Pollution Control Board | 2 | 1 | 1 | 3 | 1 | 1 | 3 | 3 | 2 | - | 1 | - | 1 | - | - | 3 | 1 | 1 | 1 | 1 | - | - | - | - | - | - | - | - |
| Prisoner Review Board | 2 | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - |
| Public Health, Department of [18] | 12 | 12 | 11 | 1 | 15 | 2 | 2 | 2 | 3 | 1 | 18 | 3 | 13 | 8 | 4 | 24 | 7 | 6 | 13 | 10 | 1 | 3 | 2 | 1 | 3 | 23 | 1 | 13 |
| Purchased Care Review Board [28] | 1 | 4 | 1 | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - |
| Racing Board | 6 | 7 | 2 | - | 2 | 2 | 1 | 2 | - | - | 1 | 1 | - | 2 | 1 | 3 | 1 | 4 | 1 | - | - | 3 | - | - | 3 | 1 | 2 | 3 |
| Retirement System, State Employees' | - | - | 3 | - | 1 | - | 1 | 1 | - | - | - | - | - | - | - | - | - | - | - | 2 | - | - | - | - | 1 | - | 1 | - |
| Retirement System, State Universities | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | 1 | - | - | - | - | - | - | - | - |
| Retirement System, Teachers' | 1 | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | 1 | - | - | 2 | 3 | - | - | - | - | - | - | - |
| Revenue, Department of [27] | - | 1 | 9 | 1 | 3 | - | 1 | - | 4 | - | 4 | 2 | 1 | 3 | 2 | 5 | - | 3 | 2 | 1 | 5 | 5 | 6 | 5 | 3 | 14 | 8 | 1 |
| Secretary of State | 3 | 2 | - | 1 | 1 | 3 | 3 | 6 | 2 | - | - | 1 | - | 3 | 2 | 5 | 2 | 1 | 7 | 4 | 3 | 3 | 7 | 10 | 4 | 4 | 3 | 2 |
| Sex Offender Management Board | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | 2 | - |
| Specialized Care for Children, Division of | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | 1 | - | - | - | - | - |
| State Mandates Board of Appeals | - | - | - | - | 1 | - | - | 1 | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - |
| State Police Merit Board [8] | 3 | - | 1 | - | - | - | 2 | - | - | - | - | 1 | - | - | 1 | - | - | - | 1 | - | - | - | 1 | - | - | - | - | - |
| State Police, Department of [14] | 1 | - | - | - | - | - | - | - | 1 | - | - | - | 1 | 1 | 1 | - | - | - | 2 | - | - | - | - | 3 | 2 | - | - | - |

## HISTORY OF EMERGENCY RULEMAKING BY AGENCY
## 1978 THROUGH 2004

| AGENCY | 78 | 79 | 80 | 81 | 82 | 83 | 84 | 85 | 86 | 87 | 88 | 89 | 90 | 91 | 92 | 93 | 94 | 95 | 96 | 97 | 98 | 99 | 00 | 01 | 02 | 03 | 04 | 05 |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| Student Assistance Commission [9] | - | - | - | 1 | 2 | 1 | - | - | 2 | 2 | 1 | - | 1 | 5 | 2 | 3 | 1 | 1 | 2 | - | 1 | - | - | - | - | 1 | 1 | - |
| Toll Highway Authority, Illinois State | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | 2 | - | 1 | 1 | 2 | - |
| Transportation, Department of [10] | 1 | 2 | 2 | 1 | - | - | 1 | 1 | 1 | 2 | - | - | - | - | 1 | - | 1 | - | - | 1 | 1 | - | 5 | - | - | - | 2 | 1 |
| Travel Control Board, Legislative | 1 | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - |
| Travel Regulation Council | - | - | - | - | - | - | - | - | 1 | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - |
| Treasurer | - | - | - | - | - | - | - | 1 | - | - | - | - | - | - | - | - | - | - | - | - | 1 | - | 3 | 1 | - | - | 1 | 2 |
| University of Illinois, Board of Trustees | - | - | - | 1 | - | 1 | - | - | - | - | - | - | - | - | - | 2 | - | 1 | - | - | 4 | - | 1 | - | - | - | - | - |
| Veterans' Affairs, Department of | - | - | - | - | - | - | - | - | 1 | - | - | - | - | - | - | - | 1 | - | - | - | - | - | - | - | - | - | - | - |
| Workers' Compensation Commission [32] | - | - | 1 | 2 | 2 | - | 2 | 2 | 2 | - | - | - | 4 | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - |
| **TOTALS** | **133** | **100** | **96** | **48** | **82** | **49** | **76** | **72** | **85** | **51** | **78** | **71** | **67** | **72** | **101** | **129** | **47** | **79** | **70** | **90** | **111** | **82** | **100** | **70** | **79** | **93** | **88** | **83** |

**This table illustrates the number of rulemakings commenced by each agency during the calendar year.**

[1] DASA, once a division of Dangerous Drugs Commission, became a separate agency in 1984. [2] The Depts. of Personnel and Administrative Services were combined in 1982 and the name was changed to Dept. of Central Management Services. [3] Includes Emergency Services & Disaster Agency, which was renamed IEMA in 1992. [4] Includes State's Attorneys Appellate Service Commission. [5] The Military & Naval Department became the Department of Military Affairs in 1988. [6] The Department of Registration & Education became DPR in 1988. [7] Commissioner of Savings & Loan Associations became the Commissioner of Savings & Residential Finance in 1990 and combined with the Commissioner of Banks and Trusts to become the Commissioner of Banks and Real Estate in 1996. The new office also absorbed the real estate licensing functions of DPR. [8] Until 1986, the Dept. of Law Enforcement Merit Board. [9] The State Scholarship Commission became ISAC in 1989. [10] In 1995, DOC, ENR (previously, Institute of Natural Resources), M&M, AMLRC, and DOT Waterways Division were merged into the Department of Natural Resources. [11] July 1997, DHS was formed from DASA, DORS, DMHDD, and specific programs from DPA and DPH. [12] In 1996, the Savings and Loan Adivsory Board became the Board of Savings Instituions. [13] In 1996, the Board of Regents/Governors were disbanded in favor of individual boards of trustees. [14] Prior to 1985, Department of Law Enforcement. [15] Prior to 1979, Department of Local Government Affairs. [16] Includes State Fair Agency (prior to 1979). [17] Absorbed Fair Employment Practices Commission in 1980. [18] HCCC absorbed Health Finance Authority (1979-82) duties in 1984. HCCC was abolished in 2002 and its duites taken by DPH. [22] In 2000, the Local Labor Relations and State Labor Relations Boards were combined into the Illinois Labor Relations Board. [23] In 2003, DCCA became DCEO. [24] The Military & Naval Department became the Department of Military Affairs in 1988. [25] In 2003, DNS was absorbed by IEMA. [26] In 2003, Prairie State 2000 Auth. was transferred to DCEO. [27] In 2003, Department of the Lottery was transferred to Revenue. [28] The Governor's Purchased Care Review Board became the Purchased Care Review Board when it moved into SBE in 1996. [28] In 2004, the Departments of Insurance, Professional Regulation and Financial Institutions and the Office of Banks and Real Estate were combined into the Department of Financial and Professional Regulation. [29] Illinois Building Commission was absorbed by the Capital Development Board 7/1/04. [30] The Illinois Finance Authority absorbed Illinois Development Finance Authority, Illinois Farm Development Authority, Illinois Health Facilities Authority, Illinois Research Park Authority, Illinois Rural Bond Bank, Illinois Educational Facilities Authority and the Illinois Community Development Finance Corporation 1/1/04. [31] 7/1/05, the name of the Department of Public Aid was changed to the Department of Healthcare and Family Services. [32] On 1/1/05, the name of the Illinois Industrial Commission was changed to the Illinois Workers' Compensation Commission. [33] On 1/1/99, PA 90-737 repealed the Governor's Ethics Commission and replaced it

## HISTORY OF PEREMPTORY/EXEMPT RULEMAKING BY AGENCY
## 1978 THROUGH 2004

| AGENCY | 78 | 79 | 80 | 81 | 82 | 83 | 84 | 85 | 86 | 87 | 88 | 89 | 90 | 91 | 92 | 93 | 94 | 95 | 96 | 97 | 98 | 99 | 00 | 01 | 02 | 03 | 04 | 05 |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| Aging, Department of | - | - | 1 | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - |
| Agriculture, Department of [16] | - | - | - | - | - | - | - | 9 | 10 | 9 | 7 | 5 | 5 | 4 | 6 | 4 | 7 | 5 | 5 | 6 | 4 | 2 | 5 | 3 | 2 | 4 | 4 | 4 |
| Central Management Services, Department of [2] | - | - | - | - | - | - | - | - | 6 | 7 | 7 | 3 | 4 | 2 | 2 | 1 | 3 | 6 | 4 | 5 | 11 | 3 | 6 | 3 | 2 | 1 | 10 | 13 |
| Children & Family Services, Department of | - | - | - | 1 | - | - | 1 | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | 2 |
| Commerce Commission | - | - | - | - | 1 | - | - | - | - | - | 2 | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - |
| Comptroller | - | - | - | - | 1 | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - |
| Corrections, Department of | 9 | - | - | 1 | 3 | 1 | - | - | - | - | - | - | - | - | - | 2 | - | - | - | - | - | - | - | - | - | - | - | - |
| Education, State Board of | 2 | 1 | 7 | - | - | 1 | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | 2 | - | - | - | - | - |
| Employment Security, Department of | - | - | - | - | - | - | - | 1 | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - |
| Healthcare and Family Services, Department of [13] | 12 | 6 | 5 | 31 | 6 | 3 | 9 | 2 | 3 | 4 | 2 | 1 | 1 | 1 | 1 | 1 | - | 1 | 1 | - | - | - | - | - | - | - | - | - |
| Department of Human Services [11][1] | - | - | - | - | - | - | - | - | - | 1 | 1 | - | - | - | - | - | - | - | - | - | - | - | - | - | 1 | 1 | 1 | 2 |
| Labor, Department of | - | - | - | - | 1 | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - |
| Natural Resources, Department of [10] | - | - | - | - | - | - | - | 2 | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - |
| Nature Preserves Commission | - | - | - | - | 1 | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - |
| Pollution Control Board | - | 1 | 4 | 8 | 7 | 10 | 11 | 9 | 14 | 10 | - | - | - | 21 | 25 | 20 | 30 | 20 | 17 | 19 | 22 | 19 | 24 | 13 | 14 | 11 | 10 | 18 |
| Public Health, Department of | - | - | - | - | 1 | - | 1 | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - |
| Retirement System, State Employees | - | - | - | - | - | 1 | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - |
| Revenue, Department of | - | - | - | - | - | - | - | - | - | 1 | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - |
| Transportation, Department of [10] | 1 | - | - | - | - | - | - | - | - | - | - | 1 | - | - | - | - | - | - | - | - | - | - | - | - | - | - | 4 | 5 |
| Travel Regulation Council | - | - | - | - | - | - | - | - | - | 1 | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - |
| Treasurer | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | 1 | - | - | - | - | - | - | - | - | - | - | - | - |
| Obsolete Boards & Commissions | - | 1 | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - |
| TOTALS | 24 | 9 | 17 | 41 | 21 | 16 | 22 | 23 | 33 | 33 | 19 | 10 | 10 | 28 | 34 | 29 | 40 | 32 | 27 | 30 | 37 | 24 | 37 | 19 | 19 | 17 | 29 | 44 |

**This table illustrates the number of rulemakings commenced by each agency during the calendar year.**

[1] DASA, once a division of Dangerous Drugs Commission, became a separate agency in 1984. [2] The Depts. of Personnel and Administrative Services were combined in 1982 and the name was changed to Dept. of Central Management Services. [3] Includes Emergency Services & Disaster Agency, which was renamed IEMA in 1992. [4] Includes rules of the Institute of Natural Resources, which predated the Department. [5] The Military & Naval Department became the Department of Military Affairs in 1988. [6] The Department of Registration & Education became DPR in 1988. [7] Commissioner of Savings & Loan Associations became the Commissioner of Savings & Residential Finance in 1990. [8] Until 1986, the Dept. of Law Enforcement Merit Board. [9] The State Scholarship Commission became ISAC in 1989. [10] In 1995, DOC, M&M, AMLRC, and DOT Waterways Division were merged into the Department of Natural Resources. [11] July 1997. DHS was formed from DASA, DORS, DMHDD, and specific programs from DPA and DPH. [12] In 1996, the Savings and Loan Adivsory Board became the Board of Savings Institutions. [13] 7/1/05, the name of the Department of Public Aid was changed to the Department of Healthcare and Family Services.

# Illinois Administrative Procedure Act

## ARTICLE 1. TITLE AND GENERAL PROVISIONS

### Section 1-1 Short title

This Act may be cited as the Illinois Administrative Procedure Act.

### Section 1-5 Applicability

a) This Act applies to every agency as defined in this Act. Beginning January 1, 1978, in case of conflict between the provisions of this Act and the Act creating or conferring power on an agency, this Act shall control. If, however, an agency (or its predecessor in the case of an agency that has been consolidated or reorganized) has existing procedures on July 1, 1977, specifically for contested cases or licensing, those existing provisions control, except that this exception respecting contested cases and licensing does not apply if the Act creating or conferring power on the agency adopts by express reference the provisions of this Act. Where the Act creating or conferring power on an agency establishes administrative procedures not covered by this Act, those procedures shall remain in effect.

b) The provisions of this Act do not apply to (i) preliminary hearings, investigations, or practices where no final determinations affecting State funding are made by the State Board of Education, (ii) legal opinions issued under Section 2-3.7 of the School Code, (iii) as to State colleges and universities, their disciplinary and grievance proceedings, academic irregularity and capricious grading proceedings, and admission standards and procedures, and (iv) the class specifications for positions and individual position descriptions prepared and maintained under the Personnel Code. Those class specifications shall, however, be made reasonably available to the public for inspection and copying. The provisions of this Act do not apply to hearings under Section 20 of the Uniform Disposition of Unclaimed Property Act.

c) Section 5-35 of this Act relating to procedures for rulemaking does not apply to the following:

1) Rules adopted by the Pollution Control Board that, in accordance with Section 7.2 of the Environmental Protection Act, are identical in substance to federal regulations or amendments to those regulations implementing the following: Sections 3001, 3002, 3003, 3004, 3005, and 9003 of the Solid Waste Disposal Act; Section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980; Sections 307(b), 307(c), 307(d), 402(b)(8), and 402(b)(9) of the Federal

Water Pollution Control Act; and Sections 1412(b), 1414(c), 1417(a), 1421, and 1445(a) of the Safe Drinking Water Act.

2) Rules adopted by the Pollution Control Board that establish or amend standards for the emission of hydrocarbons and carbon monoxide from gasoline powered motor vehicles subject to inspection under Section 13A-105 of the Vehicle Emissions Inspection Law and rules adopted under Section 13B-20 of the Vehicle Emissions Inspection Law of 1995.

3) Procedural rules adopted by the Pollution Control Board governing requests for exceptions under Section 14.2 of the Environmental Protection Act.

4) The Pollution Control Board's grant, pursuant to an adjudicatory determination, of an adjusted standard for persons who can justify an adjustment consistent with subsection (a) of Section 27 of the Environmental Protection Act.

5) Rules adopted by the Pollution Control Board that are identical in substance to the regulations adopted by the Office of the State Fire Marshal under clause (ii) of paragraph (b) of subsection (3) of Section 2 of the Gasoline Storage Act.

d) Pay rates established under Section 8a of the Personnel Code shall be amended or repealed pursuant to the process set forth in Section 5-50 within 30 days after it becomes necessary to do so due to a conflict between the rates and the terms of a collective bargaining agreement covering the compensation of an employee subject to that Code.

e) Section 10-45 of this Act shall not apply to any hearing, proceeding, or investigation conducted under Section 13-515 of the Public Utilities Act.

f) Article 10 of this Act does not apply to any hearing, proceeding, or investigation conducted by the State Council for the State of Illinois created under Section 3-3-11.05 of the Unified Code of Corrections or by the Interstate Commission Commision for Adult Offender Supervision created under the Interstate Compact for Adult Offender Supervision.

**Section 1-10 Definitions**

As used in this Act, unless the context otherwise requires, terms have the meanings set forth in the following Sections.

**Section 1-15 Administrative law judge**

"Administrative law judge" means the presiding officer or officers at the initial hearing before each agency and each continuation of that hearing. The term also includes but is not limited to hearing examiners, hearing officers, referees, and arbitrators.

**Section 1-20 Agency**

"Agency" means each officer, board, commission, and agency created by the Constitution, whether in the executive, legislative, or judicial branch of State government, but other than the circuit court; each officer, department, board, commission, agency, institution, authority, university, and body politic and corporate of the State; each administrative unit or corporate outgrowth of the State government that is created by or pursuant to statute, other than units of local government and their officers, school districts, and boards of election commissioners; and each administrative unit or corporate outgrowth of the above and as may be created by executive order of the Governor. "Agency", however, does not include the following:

1) The House of Representatives and Senate and their respective standing and service committees, including without limitation the Board of the Office of the Architect of the Capitol and the Architect of the Capitol established under the Legislative Commission Reorganization Act of 1984.
2) The Governor.
3) The justices and judges of the Supreme and Appellate Courts.
4) The Legislative Ethics Commission

**Section 1-25 Agency head**

"Agency head" means an individual or group of individuals in whom the ultimate legal authority of an agency is vested by any provision of law.

**Section 1-30 Contested case**

"Contested case" means an adjudicatory proceeding (not including ratemaking, rulemaking, or quasi-legislative, informational, or similar proceedings) in which the individual legal rights, duties, or privileges of a party are required by law to be determined by an agency only after an opportunity for a hearing.

**Section 1-35 License**

"License" includes the whole or part of any agency permit, certificate, approval, registration, charter, or similar form of permission required by law, but it does not include a license required solely for revenue purposes.

**Section 1-40 Licensing**

"Licensing" includes the agency process respecting the grant, denial, renewal, revocation, suspension, annulment, withdrawal, or amendment of a license.

**Section 1-45 Municipality**

"Municipality" has the meaning ascribed to it in Section 1-1-2 of the Illinois Municipal Code.

**Section 1-50 Order**

"Order" means an agency action of particular applicability that determines the legal rights, duties, privileges, immunities, or other legal interests of one or more specific persons.

**Section 1-55 Party**

"Party" means each person or agency named or admitted as a party or properly seeking and entitled as of right to be admitted as a party.

**Section 1-60 Person**

"Person" means any individual, partnership, corporation, association, governmental subdivision, or public or private organization of any character other than an agency.

**Section 1-65 Ratemaking**

"Ratemaking" or "ratemaking activities" means the establishment or review of or other exercise of control over the rates or charges for the products or services of any person, firm, or corporation operating or transacting any business in this State.

**Section 1-70 Rule**

"Rule" means each agency statement of general applicability that implements, applies, interprets, or prescribes law or policy, but does not include (i) statements concerning only the internal management of an agency and not affecting private rights or procedures available to persons or entities outside the agency, (ii) informal advisory rulings issued under Section 5-150, (iii) intra-agency memoranda, (iv) the prescription of standardized forms, or (v) documents prepared or filed or actions taken by the Legislative Reference Bureau under Section 5.04 of the Legislative Reference Bureau Act.

**Section 1-75 Small business**

"Small business" means a corporation or a concern, including its affiliates, that is independently owned and operated, not dominant in its field, and employs fewer than 50 full-time employees or has gross annual sales of less than $4,000,000. For purposes of a specific rule, an agency may define small business to include employment of 50 or more persons if it finds that such a definition is necessary to adapt the rule to the needs and problems of small businesses and organizations.

**Section 1-80 Small municipality**

"Small municipality" means any municipality of 5,000 or fewer inhabitants and any municipality of more than 5,000 inhabitants that employs fewer than 50 persons full-time. For purposes of a specific rule, an agency may define small municipality to include employment of more than 50 persons if it finds that such a definition is necessary to adapt the rule to the needs and problems of small municipalities.

**Section 1-85 Not for profit corporation**

"Not for profit corporation" means a corporation organized under the General Not For Profit Corporation Act of 1986 that is not dominant in its field and employs fewer than 50 full-time employees or has gross annual sales of less than $4,000,000. For purposes of a specific rule, an agency may define a not for profit corporation to include employment of 50 or more persons if it finds that such a definition is necessary to adapt the rule to the needs and problems of not for profit corporations.

**Section 1-90 Rulemaking**

a) "Rulemaking" means the process and required documentation for the adoption of Illinois Administrative Code text.

b) Required documentation.

1) At the time of original proposal, rulemaking documentation must consist of a notice page and new, amendatory, or repealed text. New, repealed, and amendatory text must be depicted in the manner required by Secretary of State rule. Amendatory rulemakings must indicate text deletion by striking through all text that is to be omitted and must indicate text addition by underlining all new text.

2) At the time of adoption, documentation must also include pages indicating the text of the new rule, without striking and underlining, for inclusion in the official Secretary of State records, the certification required under Section 5-65(a), and any additional documentation required by Secretary of State rule.

3) For a required rulemaking adopted under Section 5-15, an emergency rulemaking under Section 5-45, or a peremptory rulemaking under Section 5-50, the documentation requirements of paragraphs (b)(1) and (2) of this Section apply at the time of adoption.

c) "Background text" means existing text of the Illinois Administrative Code that is part of a rulemaking but is not being amended by the rulemaking. Background text in rulemaking documentation shall match the current text of the Illinois Administrative Code.

d) No material that was originally proposed in one rulemaking may be combined with another proposed rulemaking that was initially published without that material. However, this does not preclude separate rulemakings from being combined for publication at the time of adoption as authorized by Secretary of State rule.

## ARTICLE 5. RULEMAKING PROVISIONS

**Section 5-5 Applicability**

All rules of agencies shall be adopted in accordance with this Article.

**Section 5-10 Adoption and availability of rules**

a) In addition to other rulemaking requirements imposed by law, each agency shall (i) adopt rules of practice setting forth the nature and requirements of all formal hearings and (ii) make available for public inspection all rules adopted by the agency in the discharge of its functions.

b) Each agency shall make available for public inspection all final orders, decisions, and opinions, except those deemed confidential by State or federal statute and any trade secrets.

c) No agency rule is valid or effective against any person or party, nor may it be invoked by the agency for any purpose, until it has been made available for public inspection and filed with the Secretary of State as required by this Act. No agency, however, shall assert the invalidity of a rule that it has adopted under this Act when an opposing party has relied upon the rule.

d) Rulemaking that creates or expands a State mandate on units of local government, school districts, or community college districts is subject to the State Mandates Act. The required Statement of Statewide Policy Objectives shall be published in the Illinois Register at the same time that the first notice under Section 5-40 is published or when the rule is published under Section 5-45 or 5-50.

**Section 5-15 Required rules**

a) Each agency shall maintain as rules the following:
   1) A current description of the agency's organization with necessary charts depicting that organization.
   2) The current procedures by which the public can obtain information or make submissions or requests on subjects, programs, and activities of the agency. Requests for copies of agency rules shall not be deemed Freedom of Information Act requests unless so labeled by the requestor.
   3) Tables of contents, indices, reference tables, and other materials to aid users in finding and using the agency's collection of rules currently in force.
   4) A current description of the agency's rulemaking procedures with necessary flow charts depicting those procedures.
   5) Any rules adopted under this Section in accordance with Sections 5-75 and 10-20 of this Act.

b) The rules required to be filed by this Section may be adopted, amended, or repealed and filed as provided in this Section instead of any other provisions or requirements of this Act. The rules required by this Section may be adopted, amended, or repealed by filing a certified copy with the Secretary of State under subsections (a) and (b) of Section 5-65 and may become effective immediately.

**Section 5-20 Implementing discretionary powers**

Each rule that implements a discretionary power to be exercised by an agency shall include the standards by which the agency shall exercise the power. The standards shall be stated as precisely and clearly as practicable under the conditions to inform fully those persons affected.

**Section 5-25 Ratemaking**

Every agency that is empowered by law to engage in ratemaking activities shall establish by rule, not inconsistent with the provisions of law establishing its ratemaking jurisdiction, the practice and procedures to be followed in ratemaking activities before the agency.

**Section 5-30 Regulatory flexibility**

When an agency proposes a new rule or an amendment to an existing rule that may have an impact on small businesses, not for profit corporations, or small municipalities, the agency shall do each of the following:

a) The agency shall consider each of the following methods for reducing the impact of the rulemaking on small businesses, not for profit corporations, or small municipalities. The agency shall reduce the impact by utilizing one or more of the following methods if it finds that the methods are legal and feasible in meeting the statutory objectives that are the basis of the proposed rulemaking.
   1) Establish less stringent compliance or reporting requirements in the rule for small businesses, not for profit corporations, or small municipalities.
   2) Establish less stringent schedules or deadlines in the rule for compliance or reporting requirements for small businesses, not for profit corporations, or small municipalities.
   3) Consolidate or simplify the rule's compliance or reporting requirements for small businesses, not for profit corporations, or small municipalities.
   4) Establish performance standards to replace design or operational standards in the rule for small businesses, not for profit corporations, or small municipalities.
   5) Exempt small businesses, not for profit corporations, or small municipalities from any or all requirements of the rule.

b) Before or during the notice period required under subsection (b) of Section 5-40, the agency shall provide an opportunity for small businesses, not for profit corporations, or small municipalities to participate in the rulemaking process. The agency shall utilize one or more of the following techniques. These techniques are in addition to other rulemaking requirements imposed by this Act or by any other Act.
   1) The inclusion in any advance notice of possible rulemaking of a statement that the rule may have an impact on small businesses, not for profit corporations, or small municipalities.
   2) The publication of a notice of rulemaking in publications likely to be obtained by small businesses, not for profit corporations, or small municipalities.

3) The direct notification of interested small businesses, not for profit corporations, or small municipalities.

4) The conduct of public hearings concerning the impact of the rule on small businesses, not for profit corporations, or small municipalities.

5) The use of special hearing or comment procedures to reduce the cost or complexity of participation in the rulemaking by small businesses, not for profit corporations, or small municipalities.

c) Before the notice period required under subsection (b) of Section 5-40, the Secretary of State shall provide to the Business Assistance Office of the Department of Commerce and Community Affairs a copy of any proposed rules or amendments accepted for publication. The Business Assistance Office shall prepare an impact analysis of the rule describing the rule's effect on small businesses whenever the Office believes, in its discretion, that an analysis is warranted or whenever requested to do so by 25 interested persons, an association representing at least 100 interested persons, the Governor, a unit of local government, or the Joint Committee on Administrative Rules. The impact analysis shall be completed within the notice period as described in subsection (b) of Section 5-40. Upon completion of the analysis the Business Assistance Office shall submit this analysis to the Joint Committee on Administrative Rules, any interested person who requested the analysis, and the agency proposing the rule. The impact analysis shall contain the following:

1) A summary of the projected reporting, recordkeeping, and other compliance requirements of the proposed rule.

2) A description of the types and an estimate of the number of small businesses to which the proposed rule will apply.

3) An estimate of the economic impact that the regulation will have on the various types of small businesses affected by the rulemaking.

4) A description or listing of alternatives to the proposed rule that would minimize the economic impact of the rule. The alternatives must be consistent with the stated objectives of the applicable statutes and regulations.

**Section 5-35 Procedure for rulemaking**

a) Before the adoption, amendment, or repeal of any rule, each agency shall accomplish the actions required by Section 5-40, 5-45, or 5-50, whichever is applicable.

b) No action by any agency to adopt, amend, or repeal a rule after this Act has become applicable to the agency shall be valid unless taken in compliance with this Section. A proceeding to contest any rule on the ground of non-compliance with the procedural requirements of this Section must be commenced within 2 years from the effective date of the rule.

c) The rulemaking procedures of this Article 5 do not apply to a matter relating solely to agency management or personnel practices or to public property, loans, or contracts.

**Section 5-40 General rulemaking**

a) In all rulemaking to which Sections 5-45 and 5-50 do not apply, each agency shall comply with this Section.

b) Each agency shall give at least 45 days' notice of its intended action to the general public. This first notice period shall commence on the first day the notice appears in the Illinois Register. The first notice shall include all the following:

1) The text of the proposed rule, the old and new materials of a proposed amendment, or the text of the provision to be repealed.

2) The specific statutory citation upon which the proposed rule, the proposed amendment to a rule, or the proposed repeal of a rule is based and by which it is authorized.

3) A complete description of the subjects and issues involved.

3.5) A descriptive title or other description of any published study or research report used in developing the rule, the identity of the person who performed such study, and a description of where the public may obtain a copy of any such study or research report. If the study was performed by an agency or by a person or entity that contracted with the agency for the performance of the study, the agency shall also make copies of the underlying data available to members of the public upon request if the data are not protected from disclosure under the Freedom of Information Act.

4) For all proposed rules and proposed amendments to rules, an initial regulatory flexibility analysis containing a description of the types of small businesses subject to the rule; a brief description of the proposed reporting, bookkeeping, and other procedures required for compliance with the rule; and a description of the types of professional skills necessary for compliance.

5) The time, place, and manner in which interested persons may present their views and comments concerning the proposed rulemaking.

During the first notice period, the agency shall accept from any interested persons data, views, arguments, or comments. These may, in the discretion of the agency, be submitted either orally or in writing or both. The notice published in the Illinois Register shall indicate the manner selected by the agency for the submissions. The agency shall consider all submissions received.

The agency shall hold a public hearing on the proposed rulemaking during the first notice period if (i) during the first notice period, the agency finds that a public hearing would facilitate the submission of views and comments that might not otherwise be submitted or (ii) the agency receives a request for a public hearing, within the first 14 days after publication of the notice of proposed rulemaking in the Illinois Register, from 25 interested persons, an association representing at least 100

interested persons. the Governor, the Joint Committee on Administrative Rules, or a unit of local government that may be affected. At the public hearing, the agency shall allow interested persons to present views and comments on the proposed rulemaking. A public hearing in response to a request for a hearing may not be held less than 20 days after the publication of the notice of proposed rulemaking in the Illinois Register unless notice of the public hearing is included in the notice of proposed rulemaking. A public hearing on proposed rulemaking may not be held less than 5 days before submission of the notice required under subsection (c) of this Section to the Joint Committee on Administrative Rules. Each agency may prescribe reasonable rules for the conduct of public hearings on proposed rulemaking to prevent undue repetition at the hearings. The hearings must be open to the public and recorded by stenographic or mechanical means. At least one agency representative shall be present during the hearing who is qualified to respond to general questions from the public regarding the agency's proposal and the rulemaking process.

c) Each agency shall provide additional notice of the proposed rulemaking to the Joint Committee on Administrative Rules. The period commencing on the day written notice is received by the Joint Committee shall be known as the second notice period and shall expire 45 days thereafter unless before that time the agency and the Joint Committee have agreed to extend the second notice period beyond 45 days for a period not to exceed an additional 45 days or unless the agency has received a statement of objection from the Joint Committee or notification from the Joint Committee that no objection will be issued. The written notice to the Joint Committee shall include (i) the text and location of any changes made to the proposed rulemaking during the first notice period in a form prescribed by the Joint Committee; (ii) for all proposed rules and proposed amendments to rules, a final regulatory flexibility analysis containing a summary of issues raised by small businesses during the first notice period and a description of actions taken on any alternatives to the proposed rule suggested by small businesses during the first notice period, including reasons for rejecting any alternatives not utilized; and (iii) if a written request has been made by the Joint Committee within 30 days after initial notice appears in the Illinois Register under subsection (b) of this Section, an analysis of the economic and budgetary effects of the proposed rulemaking. After commencement of the second notice period, no substantive change may be made to a proposed rulemaking unless it is made in response to an objection or suggestion of the Joint Committee. The agency shall also send a copy of the final regulatory flexibility analysis to each small business that has presented views or comments on the proposed rulemaking during the first notice period and to any other interested person who requests a copy. The agency may charge a reasonable fee for providing the copies to cover postage and handling costs.

d) After the expiration of the second notice period, after notification from the Joint Committee that no objection will be issued, or after a response by the agency to a statement of objections issued by the Joint Committee, whichever is applicable,

the agency shall file, under Section 5-65, a certified copy of each rule, modification, or repeal of any rule adopted by it. The copy shall be published in the Illinois Register. Each rule hereafter adopted under this Section is effective upon filing unless a later effective date is required by statute or is specified in the rulemaking.

e) No rule or modification or repeal of any rule may be adopted, or filed with the Secretary of State, more than one year after the date the first notice period for the rulemaking under subsection (b) commenced. Any period during which the rulemaking is prohibited from being filed under Section 5-115 shall not be considered in calculating this one-year time period.

**Section 5-45 Emergency rulemaking**

a) "Emergency" means the existence of any situation that any agency finds reasonably constitutes a threat to the public interest, safety, or welfare.

b) If any agency finds that an emergency exists that requires adoption of a rule upon fewer days than is required by Section 5-40 and states in writing its reasons for that finding, the agency may adopt an emergency rule without prior notice or hearing upon filing a notice of emergency rulemaking with the Secretary of State under Section 5-70. The notice shall include the text of the emergency rule and shall be published in the Illinois Register. Consent orders or other court orders adopting settlements negotiated by an agency may be adopted under this Section. Subject to applicable constitutional or statutory provisions, an emergency rule becomes effective immediately upon filing under Section 5-65 or at a stated date less than 10 days thereafter. The agency's finding and a statement of the specific reasons for the finding shall be filed with the rule. The agency shall take reasonable and appropriate measures to make emergency rules known to the persons who may be affected by them.

c) An emergency rule may be effective for a period of not longer than 150 days, but the agency's authority to adopt an identical rule under Section 5-40 is not precluded. No emergency rule may be adopted more than once in any 24 month period, except that this limitation on the number of emergency rules that may be adopted in a 24 month period does not apply to (i) emergency rules that make additions to and deletions from the Drug Manual under Section 5-5.16 of the Illinois Public Aid Code or the generic drug formulary under Section 3.14 of the Illinois Food, Drug and Cosmetic Act or (ii) emergency rules adopted by the Pollution Control Board before July 1, 1997 to implement portions of the Livestock Management Facilities Act, or (iii) emergency rules adopted by the Illinois Department of Public Health under subsections (a) through (i) of Section 2 of the Department of Public Health Act when necessary to protect the public's health. Two or more emergency rules having substantially the same purpose and effect shall be deemed to be a single rule for purposes of this Section.

d) In order to provide for the expeditious and timely implementation of the State's fiscal year 1999 budget, emergency rules to implement any provision of Public Act 90-587 or 90-588 or any other budget initiative for fiscal year 1999 may be

adopted in accordance with this Section by the agency charged with administering that provision or initiative, except that the 24-month limitation on the adoption of emergency rules and the provisions of Sections 5-115 and 5-125 do not apply to rules adopted under this subsection (d). The adoption of emergency rules authorized by this subsection (d) shall be deemed to be necessary for the public interest, safety, and welfare.

e) In order to provide for the expeditious and timely implementation of the State's fiscal year 2000 budget, emergency rules to implement any provision of this amendatory Act of the 91st General Assembly or any other budget initiative for fiscal year 2000 may be adopted in accordance with this Section by the agency charged with administering that provision or initiative, except that the 24-month limitation on the adoption of emergency rules and the provisions of Sections 5-115 and 5-125 do not apply to rules adopted under this subsection (e). The adoption of emergency rules authorized by this subsection (e) shall be deemed to be necessary for the public interest, safety, and welfare.

f) In order to provide for the expeditious and timely implementation of the State's fiscal year 2001 budget, emergency rules to implement any provision of this amendatory Act of the 91st General Assembly or any other budget initiative for fiscal year 2001 may be adopted in accordance with this Section by the agency charged with administering that provision or initiative, except that the 24-month limitation on the adoption of emergency rules and the provisions of Sections 5-115 and 5-125 do not apply to rules adopted under this subsection (f). The adoption of emergency rules authorized by this subsection (f) shall be deemed to be necessary for the public interest, safety, and welfare.

g) In order to provide for the expeditious and timely implementation of the State's fiscal year 2002 budget, emergency rules to implement any provision of this amendatory Act of the 92nd General Assembly or any other budget initiative for fiscal year 2002 may be adopted in accordance with this Section by the agency charged with administering that provision or initiative, except that the 24-month limitation on the adoption of emergency rules and the provisions of Sections 5-115 and 5-125 do not apply to rules adopted under this subsection (g). The adoption of emergency rules authorized by this subsection (g) shall be deemed to be necessary for the public interest, safety, and welfare.

h) In order to provide for the expeditious and timely implementation of the State's fiscal year 2003 budget, emergency rules to implement any provision of this amendatory Act of the 92nd General Assembly or any other budget initiative for fiscal year 2003 may be adopted in accordance with this Section by the agency charged with administering that provision or initiative, except that the 24-month limitation on the adoption of emergency rules and the provisions of Sections 5-115 and 5-125 do not apply to rules adopted under this subsection (h). The adoption of emergency rules authorized by this subsection (h) shall be deemed to be necessary for the public interest, safety, and welfare.

i) In order to provide for the expeditious and timely implementation of the State's fiscal year 2004 budget, emergency rules to implement any provision of this amendatory Act of the 93rd General Assembly or any other budget initiative for

fiscal year 2004 may be adopted in accordance with this Section by the agency charged with administering that provision or initiative, except that the 24-month limitation on the adoption of emergency rules and the provisions of Sections 5-115 and 5-125 do not apply to rules adopted under this subsection (i). The adoption of emergency rules authorized by this subsection (i) shall be deemed to be necessary for the public interest, safety, and welfare.

(j) In order to provide for the expeditious and timely implementation of the provisions of the State's fiscal year 2005 budget as provided under the Fiscal Year 2005 Budget Implementation (Human Services) Act, emergency rules to implement any provision of the Fiscal Year 2005 Budget Implementation (Human Services) Act may be adopted in accordance with this Section by the agency charged with administering that provision, except that the 24-month limitation on the adoption of emergency rules and the provisions of Sections 5-115 and 5-125 do not apply to rules adopted under this subsection (j). The Department of Public Aid may also adopt rules under this subsection (j) necessary to administer the Illinois Public Aid Code and the Children's Health Insurance Program Act. The adoption of emergency rules authorized by this subsection (j) shall be deemed to be necessary for the public interest, safety, and welfare.

(k) In order to provide for the expeditious and timely implementation of the provisions of the State's fiscal year 2006 budget, emergency rules to implement any provision of this amendatory Act of the 94th General Assembly or any other budget initiative for fiscal year 2006 may be adopted in accordance with this Section by the agency charged with administering that provision or initiative, except that the 24-month limitation on the adoption of emergency rules and the provisions of Sections 5-115 and 5-125 do not apply to rules adopted under this subsection (k). The Department of Public Aid may also adopt rules under this subsection (k) necessary to administer the Illinois Public Aid Code, the Senior Citizens and Disabled Persons Property Tax Relief and Pharmaceutical Assistance Act, the Senior Citizens and Disabled Persons Prescription Drug Discount Program Act, and the Children's Health Insurance Program Act. The adoption of emergency rules authorized by this subsection (k) shall be deemed to be necessary for the public interest, safety, and welfare.

**Section 5-46 (Repealed)**

**Section 5-46.1 Emergency rulemaking**

a) The General Assembly finds that the State's current financial situation constitutes an emergency for the purposes of this Act.

b) Beginning July 1, 1995, agencies may implement the changes made by this amendatory Act of 1995 or other budget reduction initiatives for Fiscal Year 1996 through the use of emergency rules in accordance with the provisions of Section 5-45 of this Act, except that the 24-month limitation on the adoption of similar emergency rules under Section 5-45 and the provisions of Sections 5-115 and

5-125 do not apply to rules adopted to implement changes made by this amendatory Act of 1995 or other budget reduction initiatives for Fiscal Year 1996.

c) Agencies may implement the changes made by this amendatory Act of 1996 or other budget reduction initiatives for Fiscal Year 1997 through the use of emergency rules in accordance with the provisions of Section 5-45 of this Act, except that the 24-month limitation on the adoption of similar emergency rules under Section 5-45 and the provisions of Sections 5-115 and 5-125 do not apply to rules adopted to implement changes made by this amendatory Act of 1996 or other budget reduction initiatives for Fiscal Year 1997.

**Section 5-47 (Repealed)**

**Section 5-50 Peremptory rulemaking**

"Peremptory rulemaking" means any rulemaking that is required as a result of federal law, federal rules and regulations, an order of a court, or a collective bargaining agreement pursuant to subsection (d) of Section 1-5, under conditions that preclude compliance with the general rulemaking requirements imposed by Section 5-40 and that preclude the exercise of discretion by the agency as to the content of the rule it is required to adopt. Peremptory rulemaking shall not be used to implement consent orders or other court orders adopting settlements negotiated by the agency. If any agency finds that peremptory rulemaking is necessary and states in writing its reasons for that finding, the agency may adopt peremptory rulemaking upon filing a notice of rulemaking with the Secretary of State under Section 5-70. The notice shall be published in the Illinois Register. A rule adopted under the peremptory rulemaking provisions of this Section becomes effective immediately upon filing with the Secretary of State and in the agency's principal office, or at a date required or authorized by the relevant federal law, federal rules and regulations, or court order, as stated in the notice of rulemaking. Notice of rulemaking under this Section shall be published in the Illinois Register, shall specifically refer to the appropriate State or federal court order or federal law, rules, and regulations, and shall be in a form as the Secretary of State may reasonably prescribe by rule. The agency shall file the notice of peremptory rulemaking within 30 days after a change in rules is required.

**Section 5-55 Automatic repeal of rules**

A rule may provide for its automatic repeal on a date specified in the rule. The repeal shall be effective on the date specified, provided that notice of the repeal is published in the Illinois Register not less than 30 nor more than 60 days before the effective date of the repeal. This Section does not apply to any rules filed under Section 5-45.

**Section 5-60 Regulatory agenda**

An agency shall submit for publication in the Illinois Register by January 1 and July 1 of each year a regulatory agenda to elicit public comments concerning any rule that the agency is considering proposing but for which no notice of proposed rulemaking activity has been

submitted to the Illinois Register. A regulatory agenda shall consist of summaries of those rules. Each summary shall, in less than 2,000 words, contain the following when practicable:

1) A description of the rule.
2) The statutory authority the agency is exercising.
3) A schedule of the dates for any hearings, meetings, or other opportunities for public participation in the development of the rule.
4) The date the agency anticipates submitting a notice of proposed rulemaking activity, if known.
5) The name, address, and telephone number of the agency representative who is knowledgeable about the rule, from whom any information may be obtained, and to whom written comments may be submitted concerning the rule.
6) A statement whether the rule will affect small businesses, not for profit corporations, or small municipalities as defined in this Act.
7) Any other information that may serve the public interest. Nothing in this Section shall preclude an agency from adopting a rule that has not been summarized in a regulatory agenda or from adopting a rule different than one summarized in a regulatory agenda if in the agency head's best judgment it is necessary. If an agency finds that a situation exists that requires adoption of a rule that was not summarized on either of the 2 most recent regulatory agendas, it shall state its reasons in writing together with the facts that form their basis upon filing the notice of proposed rulemaking with the Secretary of State under Section 5-40. Nothing in this Section shall require an agency to adopt a rule summarized in a regulatory agenda. The Secretary of State shall adopt rules necessary for the publication of a regulatory agenda, including but not limited to standard submission forms and deadlines.

**Section 5-65 Filing of rules**

a) Each agency shall file in the office of the Secretary of State and in the agency's principal office a certified copy of each rule and modification or repeal of any rule adopted by it. The Secretary of State and the agency shall each keep a permanent register of the rules open to public inspection. Whenever a rule or modification or repeal of any rule is filed with the Secretary of State, the Secretary shall send a certified copy of the rule, modification or repeal, within 3 working days after it is filed, to the Joint Committee on Administrative Rules.

b) Concurrent with the filing of any rule under this Section, the filing agency shall submit to the Secretary of State for publication in the next available issue of the Illinois Register a notice of adopted rules. The notice shall include the following:
   1) The text of the adopted rule, including the full text of the new rule (if the material is a new rule), the full text of the rule or rules as amended (if the material is an amendment to a rule or rules), or the notice of repeal (if the material is a repealer).
   2) The name, address, and telephone number of an individual who will be available to answer questions and provide information to the public concerning the adopted rules.

3) Other information that the Secretary of State may by rule require in the interest of informing the public.

**Section 5-70 Form and publication of notices**

a) The Secretary of State may prescribe reasonable rules concerning the form of documents to be filed with the Secretary of State and may refuse to accept for filing certified copies that do not comply with the rules. In addition, the Secretary of State shall publish and maintain the Illinois Register and may prescribe reasonable rules setting forth the manner in which agencies shall submit notices required by this Act for publication in the Illinois Register. The Illinois Register shall be published at least once each week on the same day (unless that day is an official State holiday, in which case the Illinois Register shall be published on the next following business day) and sent to subscribers who subscribe for the publication with the Secretary of State. The Secretary of State may charge a subscription price to subscribers that covers mailing and publication costs.

b) The Secretary of State shall accept for publication in the Illinois Register all Pollution Control Board documents, including but not limited to Board opinions, the results of Board determinations concerning adjusted standards proceedings, notices of petitions for individual adjusted standards, results of Board determinations concerning the necessity for economic impact studies, restricted status lists, hearing notices, and any other documents related to the activities of the Pollution Control Board that the Board deems appropriate for publication.

**Section 5-75 Incorporation by reference**

a) An agency may incorporate by reference, in its rules adopted under Section 5-35, rules, regulations, standards, and guidelines of an agency of the United States or a nationally or state recognized organization or association without publishing the incorporated material in full. The reference in the agency rules must fully identify the incorporated matter by publisher address and date in order to specify how a copy of the material may be obtained and must state that the rule, regulation, standard, or guideline does not include any later amendments or editions. An agency may incorporate by reference these matters in its rules only if the agency, organization, or association originally issuing the matter makes copies readily available to the public. This Section does not apply to any agency internal manual. For any law imposing taxes on or measured by income, the Department of Revenue may promulgate rules that include incorporations by reference of federal rules or regulations without identifying the incorporated matter by date and without including a statement that the incorporation does not include later amendments.

b) Use of the incorporation by reference procedure under this Section shall be reviewed by the Joint Committee on Administrative Rules during the rulemaking process as set forth in this Act.

c) The agency adopting a rule, regulation, standard, or guideline under this Section shall maintain a copy of the referenced rule, regulation, standard, or guideline in at least one of its principal offices and shall make it available to the public upon request for inspection and copying at no more than cost. Requests for copies of materials incorporated by reference shall not be deemed Freedom of Information Act requests unless so labeled by the requestor. The agency shall designate by rule the agency location at which incorporated materials are maintained and made available to the public for inspection and copying. These rules may be adopted under the procedures in Section 5-15. In addition, the agency may include the designation of the agency location of incorporated materials in a rulemaking under Section 5-35, but emergency and peremptory rulemaking procedures may not be used solely for this purpose.

**Section 5-80 Publication of rules**

a) The Secretary of State shall, by rule, prescribe a uniform system for the codification of rules. The Secretary of State shall also, by rule, establish a schedule for compliance with the uniform codification system. The Secretary of State shall not adopt any codification system or schedule under this subsection without the approval of the Joint Committee on Administrative Rules. Approval by the Joint Committee shall be conditioned solely upon establishing that the proposed codification system and schedule are compatible with existing electronic data processing equipment and programs maintained by and for the General Assembly. Nothing in this Section shall prohibit an agency from adopting rules in compliance with the codification system earlier than specified in the schedule.

b) Each rule proposed in compliance with the codification system shall be reviewed by the Secretary of State before the expiration of the public notice period under subsection (b) of Section 5-40. The Secretary of State shall cooperate with agencies in the Secretary of State's review to insure that the purposes of the codification system are accomplished. The Secretary of State shall have the authority to make changes in the numbering and location of the rule in the codification scheme if those changes do not affect the meaning of the rules. The Secretary of State may recommend changes in the sectioning and headings proposed by the agency and suggest grammatical and technical changes to correct errors. The Secretary of State may add notes concerning the statutory authority, dates proposed and adopted, and other similar notes to the text of the rules, if the notes are not supplied by the agency. This review by the Secretary of State shall be for the purpose of insuring the uniformity of and compliance with the codification system. The Secretary of State shall prepare indexes by agency, subject matter, and statutory authority and any other necessary indexes, tables, and other aids for locating rules to assist the public in the use of the Code.

c) The Secretary of State shall make available to the agency and the Joint Committee on Administrative Rules copies of the changes in the numbering and location of the rule in the codification scheme, the recommended changes in the sectioning and headings, and the suggestions made concerning the correction of grammatical

and technical errors or other suggested changes. The agency, in the notice required by subsection (c) of Section 5-40, shall provide to the Joint Committee a response to the recommendations of the Secretary of State including any reasons for not adopting the recommendations.

d) If a reorganization of agencies, transfer of functions between agencies, or abolishment of agencies by executive order or law affects rules on file with the Secretary of State, the Secretary of State shall notify the Governor, the Attorney General, and the agencies involved of the effects upon the rules on file. If the Governor or the agencies involved do not respond to the Secretary of State's notice within 45 days by instructing the Secretary of State to delete or transfer the rules, the Secretary of State may delete or place the rules under the appropriate agency for the purpose of insuring the consistency of the codification scheme and shall notify the Governor, the Attorney General, and the agencies involved.

e) (Blank).

f) The Secretary of State shall ensure that the Illinois Administrative Code is published and made available to the public in a form that is updated at least annually. The Code shall contain the complete text of all rules of all State agencies filed with the Secretary's office and effective on October 1, 1984, or later and the indexes, tables, and other aids for locating rules prepared by the Secretary of State. The Secretary of State shall design the Illinois Register to supplement the Code. The Secretary of State shall ensure that copies of the Illinois Register are available to the public and governmental entities and agencies. If the Secretary of State determines that the Secretary's office will publish and distribute either the Register or the Code, the Secretary shall make copies available to the public at a reasonable fee, established by the Secretary by rule, and shall make copies available to governmental entities and agencies at a price covering publication and mailing costs only. The Secretary of State shall make the electronically stored database of the Illinois Register and the Code available in accordance with this Section and Section 5.08 of the Legislative Information System Act.

g) The publication of a rule in the Code or in the Illinois Register as an adopted rule shall establish a rebuttable presumption that the rule was duly filed and that the text of the rule as published in the Code is the text of the rule as adopted. Publication of the text of a rule in any other location whether by the agency or some other person shall not be taken as establishing such a presumption. Judicial or official notice shall be taken of the text of each rule published in the Code or Register.

h) The codification system, the indexes, tables, and other aids for locating rules prepared by the Secretary of State, notes, and other materials developed under this Section in connection with the publication of the Illinois Administrative Code and the Illinois Register shall be the official compilations of the administrative rules of Illinois and shall be entirely in the public domain for purposes of federal copyright law.

i) The Legislative Information System shall maintain on its electronic data processing equipment the complete text of the Illinois Register and Illinois Administrative Code created in compliance with this Act. This electronic

information shall be made available for use in the publication of the Illinois Register and Illinois Administrative Code by the Secretary of State if the Secretary determines that his office will publish these materials as authorized by subsection (f).

j) The Legislative Information System, upon consultation with the Joint Committee on Administrative Rules and the Secretary of State, shall make the electronically stored database of the Illinois Register and the Illinois Administrative Code available in an electronically stored medium to those who request it. The Legislative Information System shall establish and charge a reasonable fee for providing the electronic information. Amounts received under this Section shall be deposited into the General Assembly Computer Equipment Revolving Fund.

**Section 5-85 Correction of rules filed with the Secretary of State**

a) Corrections to a proposed rulemaking that has been published in the Illinois Register but is not yet adopted shall be made pursuant to the rules of the Secretary of State. Corrections to an adopted rulemaking that has been published in the Illinois Register shall be made by initiating a new rulemaking or pursuant to subsection (b).

b) Expedited corrections to any form of adopted rule that has been published in the Illinois Register shall be made pursuant to the procedures set forth in this subsection (b) and the rules of the Joint Committee on Administrative Rules adopted pursuant to this subsection (b).

An agency may request that the Joint Committee on Administrative Rules issue a certification of correction under this subsection (b) to correct: (1) non-substantive errors such as typographical, clerical, grammatical, printing, copying or other inadvertent errors such as omission of existing or inclusion of previously repealed Illinois Administrative Code text; (2) any omissions or errors that create unintentional discrepancies between adopted rule text and text previously published in the Illinois Register or second notice rule text; or (3) any discrepancies between adopted rule text and agreements certified by the Joint Committee on Administrative Rules during the second notice period.

In requesting the Joint Committee on Administrative Rules to issue a certification of correction, the agency shall specify which of the above reasons for correction is applicable and shall submit the full affected Section of the Code, indicating both the incorrect text and the agency's proposal for correcting the error. The Joint Committee on Administrative Rules shall verify that the requested correction meets the criteria of this subsection (b), that the public interest will be served and no hardship created by remediation of the error or omission more quickly than could be accomplished by the regular rulemaking process, and that the public notice considerations of this Act are not being unduly circumvented.

Upon receiving a certification of correction from the Joint Committee on Administrative Rules, an agency shall file a notice of correction with the Secretary of State for publication in the next available issue of the Illinois Register. Pursuant to agreement between the Joint Committee on Administrative Rules and the agency, the effective date of the correction shall be identical to that of the adopted rule being corrected or a specified later date.
The agency shall take reasonable and appropriate measures to make rule corrections known to persons who may be affected by them.

**Section 5-90 Joint Committee on Administrative Rules**

a) The Joint Committee on Administrative Rules is established as a legislative support services agency subject to the Legislative Commission Reorganization Act of 1984. When feasible, the agenda of each meeting of the Joint Committee shall be submitted to the Secretary of State to be published at least 5 days before the meeting in the Illinois Register. The Joint Committee may also weekly, or as often as necessary, submit for publication in the Illinois Register lists of the dates on which notices under Section 5-40 were received and the dates on which the proposed rulemakings will be considered. The provisions of this subsection shall not prohibit the Joint Committee from acting upon an item that was not contained in the published agenda.

b) The Joint Committee may charge reasonable fees for copies of documents or publications to cover the cost of copying or printing. The Joint Committee shall, however, provide copies of documents or publications without cost to agencies that are directly affected by recommendations or findings included in the documents or publications.

**Section 5-95 Oaths and affirmations**

a) The Executive Director of the Joint Committee or any designated person may administer oaths or affirmations and take affidavits or depositions of any person.

b) The Executive Director, upon approval of a majority vote of the Joint Committee, or the presiding officers may subpoena and compel the attendance before the Joint Committee and examine under oath any person. They also may subpoena and compel the production for the Joint Committee of any records, books, papers, contracts, or other documents.

c) If any person fails to obey a subpoena issued under this Section, the Joint Committee may apply to any circuit court to secure compliance with the subpoena. The failure to comply with the order of the court issued in response thereto shall be punished as a contempt.

**Section 5-100 Powers of the Joint Committee**

The Joint Committee shall have the following powers under this Act:

a) The function of the Joint Committee shall be the promotion of adequate and proper rules by agencies and an understanding on the part of the public respecting those rules. This function shall be advisory only, except as provided in Sections 5-115 and 5-125.

b) The Joint Committee may undertake studies and investigations concerning rulemaking and agency rules.

c) The Joint Committee shall monitor and investigate agencies' compliance with the provisions of this Act, make periodic investigations of the rulemaking activities of all agencies, and evaluate and report on all rules in terms of their propriety, legal adequacy, relation to statutory authorization, economic and budgetary effects, and public policy.

d) Hearings and investigations conducted by the Joint Committee under this Act may be held at times and places within the State as the Committee deems necessary.

e) The Joint Committee may request from any agency an analysis of the following:

1) The effect of a new rule, amendment, or repealer, including any direct economic effect on the persons regulated by the rule; any anticipated effect on the proposing agency's budget and the budgets of other State agencies; and any anticipated effects on State revenues.

2) The agency's evaluation of the submissions presented to the agency under Section 5-40.

3) A description of any modifications from the initially published proposal made in the finally accepted version of the intended rule, amendment, or repealer.

4) The agency's justification and rationale for the intended rule, amendment, or repealer.

f) Failure of the Joint Committee to object to any proposed rule, amendment, or repealer or any existing rule shall not be construed as implying direct or indirect approval of the rule or proposed rule, amendment, or repealer by the Joint Committee or the General Assembly.

**Section 5-105 Responsibilities of the Joint Committee**

The Joint Committee shall have the following responsibilities under this Act:

a) The Joint Committee shall conduct a systematic and continuing study of the rules and rulemaking process of all State agencies, including those agencies not covered in Section 1-25, for the purpose of improving the rulemaking process, reducing the number and bulk of rules, removing redundancies and unnecessary repetitions, and correcting grammatical, typographical, and similar errors not affecting the construction or meaning of the rules. The Joint Committee shall make recommendations to the appropriate affected agency.

b) The Joint Committee shall review the statutory authority on which any administrative rule is based.

c) The Joint Committee shall maintain a review program to study the impact of legislative changes, court rulings, and administrative action on agency rules and rulemaking.

d) The Joint Committee shall suggest rulemaking by an agency whenever the Joint Committee, in the course of its review of the agency's rules under this Act, determines that the agency's rules are incomplete, inconsistent, or otherwise deficient.

**Section 5-110 Responsibilities of the Joint Committee with respect to proposed rules, amendments, or repealers**

a) The Joint Committee shall examine any proposed rule, amendment to a rule, and repeal of a rule to determine whether the proposed rule, amendment to a rule, or repeal of a rule is within the statutory authority upon which it is based; whether the rule, amendment to a rule, or repeal of a rule is in proper form; and whether the notice was given before its adoption, amendment, or repeal and was sufficient to give adequate notice of the purpose and effect of the rule, amendment, or repeal. In addition, the Joint Committee may consider whether the agency has considered alternatives to the rule that are consistent with the stated objectives of both the applicable statutes and regulations and whether the rule is designed to minimize economic impact on small businesses.

b) If the Joint Committee objects to a proposed rule, amendment to a rule, or repeal of a rule, it shall certify the fact to the issuing agency and include with the certification a statement of its specific objections.

c) If within the second notice period the Joint Committee certifies its objections to the issuing agency, then that agency shall do one of the following within 90 days after receiving the statement of objection:

1) Modify the proposed rule, amendment, or repealer to meet the Joint Committee's objections.

2) Withdraw the proposed rule, amendment, or repealer in its entirety.

3) Refuse to modify or withdraw the proposed rule, amendment, or repealer.

d) If an agency elects to modify a proposed rule, amendment, or repealer to meet the Joint Committee's objections, it shall make those modifications that are necessary to meet the objections and shall resubmit the rule, amendment, or repealer to the Joint Committee. In addition, the agency shall submit a notice of its election to modify the proposed rule, amendment, or repealer to meet the Joint Committee's objections to the Secretary of State, and the notice shall be published in the first available issue of the Illinois Register, but the agency shall not be required to conduct a public hearing. If the Joint Committee determines that the modifications do not remedy the Joint Committee's objections, it shall so notify the agency in writing and shall submit a copy of that notification to the Secretary of State for publication in the next available issue of the Illinois Register. In addition, the Joint Committee may recommend legislative action as provided in subsection (g) for agency refusals.

e) If an agency elects to withdraw a proposed rule, amendment, or repealer as a result of the Joint Committee's objections, it shall notify the Joint Committee in writing of its election and shall submit a notice of the withdrawal to the Secretary

of State. The notice shall be published in the next available issue of the Illinois Register.

f) Failure of an agency to respond to the Joint Committee's objections to a proposed rule, amendment, or repealer within the time prescribed in subsection (e) shall constitute withdrawal of the proposed rule, amendment, or repealer in its entirety. The Joint Committee shall submit a notice to that effect to the Secretary of State, and the notice shall be published in the next available issue of the Illinois Register. The Secretary of State shall refuse to accept for filing a certified copy of the proposed rule, amendment, or repealer under the provisions of Section 5-65.

g) If an agency refuses to modify or withdraw the proposed rule, amendment, or repealer to remedy an objection stated by the Joint Committee, it shall notify the Joint Committee in writing of its refusal and shall submit a notice of refusal to the Secretary of State. The notice shall be published in the next available issue of the Illinois Register. If the Joint Committee decides to recommend legislative action in response to an agency refusal, then the Joint Committee shall have drafted and introduced into either house of the General Assembly appropriate legislation to implement the recommendations of the Joint Committee.

h) No rule, amendment, or repeal of a rule shall be accepted by the Secretary of State for filing under Section 5-65, if the rulemaking is subject to this Section, until after the agency has responded to the objections of the Joint Committee as provided in this Section.

**Section 5-115 Other action by the Joint Committee**

a) If the Joint Committee determines that the adoption and effectiveness of a proposed rule, amendment, or repealer or portion of a proposed rule, amendment, or repealer by an agency would be objectionable under any of the standards for the Joint Committee's review specified in Section 5-100, 5-105, 5-110, 5-120, or 5-130 and would constitute a serious threat to the public interest, safety, or welfare, the Joint Committee may issue a statement to that effect at any time before the proposed rule, amendment, or repealer takes effect. The statement may be issued by the Joint Committee only upon the affirmative vote of three-fifths of the members appointed to the Joint Committee. The Joint Committee, however, may withdraw a statement within 180 days after it is issued upon the affirmative vote of a majority of the members appointed to the Joint Committee. A certified copy of each statement and withdrawal shall be transmitted to the proposing agency and to the Secretary of State for publication in the next available issue of the Illinois Register.

b) The proposed rule, amendment, or repealer or the portion of the proposed rule, amendment, or repealer to which the Joint Committee has issued a statement under subsection (a) shall not be accepted for filing by the Secretary of State nor take effect unless the statement is withdrawn or a joint resolution is passed as provided in subsection (c). The agency may not enforce or invoke for any reason a proposed rule, amendment, or repealer or any portion thereof that is prohibited from being filed by this subsection.

c) After the issuance of a statement under subsection (a), any member of the General Assembly may introduce in the General Assembly a joint resolution stating that the General Assembly desires to discontinue the prohibition against the proposed rule, amendment, or repealer or the portion thereof to which the statement was issued being filed and taking effect. If the joint resolution is not passed by both houses of the General Assembly within 180 days after receipt of the statement by the Secretary of State or the statement is not withdrawn as provided in subsection (a), the agency shall be prohibited from filing the proposed rule, amendment, or repealer or the portion thereof and the proposed rule, amendment, or repealer or the portion thereof shall not take effect. The Secretary of State shall not accept for filing the proposed rule, amendment, or repealer or the portion thereof with respect to which the Joint Committee has issued a statement under subsection (a) unless that statement is withdrawn or a joint resolution is passed as provided in this subsection. If the 180-day period expires before passage of the joint resolution, the agency may not file the proposed rule, amendment, or repealer or the portion thereof as adopted and it shall not take effect.

d) If a statement is issued under this Section, then, in response to an objection or suggestion of the Joint Committee, the agency may propose changes to the proposed rule, amendment, or repealer or portion of a proposed rule, amendment, or repealer. If the agency proposes changes, it must provide additional notice to the Joint Committee under the same terms and conditions and shall be subject to the same requirements and limitations as those set forth for a second notice period under subsection (c) of Section 5-40.

**Section 5-120 Responsibilities of the Joint Committee with respect to emergency, peremptory, and other existing rules**

a) The Joint Committee may examine any rule to determine whether the rule is within the statutory authority upon which it is based and whether the rule is in proper form.

b) If the Joint Committee objects to a rule, it shall, within 5 days of the objection, certify the fact to the adopting agency and include within the certification a statement of its specific objections.

c) Within 90 days after receiving the certification, the agency shall do one of the following:

1) Notify the Joint Committee that it has elected to amend the rule to meet the Joint Committee's objection.

2) Notify the Joint Committee that it has elected to repeal the rule.

3) Notify the Joint Committee that it refuses to amend or repeal the rule.

d) If the agency elects to amend a rule to meet the Joint Committee's objections, it shall notify the Joint Committee in writing and shall initiate rulemaking procedures for that purpose by giving notice as required by Section 5-35. The Joint Committee shall give priority to rules so amended when setting its agenda.

e) If the agency elects to repeal a rule as a result of the Joint Committee's objections, it shall notify the Joint Committee in writing of its election and shall

initiate rulemaking procedures for that purpose by giving notice as required by Section 5-35.

f) If the agency elects to amend or repeal a rule as a result of the Joint Committee's objections, it shall complete the process within 180 days after giving notice in the Illinois Register.

g) Failure of the agency to respond to the Joint Committee's objections to a rule within the time prescribed in subsection (c) shall constitute a refusal to amend or repeal the rule.

h) If an agency refuses to amend or repeal a rule to remedy an objection stated by the Joint Committee, it shall notify the Joint Committee in writing of its refusal and shall submit a notice of refusal to the Secretary of State. The notice shall be published in the next available issue of the Illinois Register. If the Joint Committee, in response to an agency refusal, decides to suspend the rule, then it may do so pursuant to Section 5-125.

**Section 5-125 Other Joint Committee action with respect to emergency or peremptory rulemaking**

a) If the Joint Committee determines that a rule or portion of a rule adopted under Section 5-45 or 5-50 is objectionable under any of the standards for the Joint Committee's review specified in Section 5-100, 5-105, 5-110, 5-120, or 5-130 and constitutes a serious threat to the public interest, safety, or welfare, the Joint Committee may issue a statement to that effect. The statement may be issued by the Joint Committee only upon the affirmative vote of three-fifths of the members appointed to the Joint Committee. The Joint Committee, however, may withdraw a statement within 180 days after it is issued upon the affirmative vote of a majority of the members appointed to the Joint Committee. A certified copy of each statement and withdrawal shall be transmitted to the affected agency and to the Secretary of State for publication in the next available issue of the Illinois Register. Within 30 days of transmittal of the statement to the agency, the agency shall notify the Joint Committee in writing whether it has elected to repeal or amend the rule. Failure of the agency to notify the Joint Committee and Secretary of State within 30 days constitutes a decision by the agency to not repeal the rule.

b) The effectiveness of the rule or the portion of a rule shall be suspended immediately upon receipt of the certified statement by the Secretary of State. The Secretary of State shall indicate the suspension prominently and clearly on the face of the affected rule or the portion of a rule filed in the Office of the Secretary of State. Rules or portions of rules suspended under this subsection shall not become effective again unless the statement is withdrawn as provided in subsection (a) or unless within 180 days from receipt of the statement by the Secretary of State, the General Assembly discontinues the suspension by joint resolution under subsection (c). The agency may not enforce, or invoke for any reason, a rule or portion of a rule that has been suspended under this subsection. During the 180-day period, the agency may not file, nor may the Secretary of State accept for filing, any rule that (i) has the same purpose and effect as rules or

portions of rules suspended under this subsection or (ii) does not substantially address the statement issued under subsection (a), except as otherwise provided in this Section.

c) After the issuance of a statement under subsection (a), any member of the General Assembly may introduce in the General Assembly a joint resolution stating that the General Assembly desires to discontinue the suspension of effectiveness of a rule or the portion of the rule to which the statement was issued. If the joint resolution is not passed by both houses of the General Assembly within the 180-day period provided in subsection (b) or the statement is not withdrawn, the rule or the portion of the rule shall be considered repealed and the Secretary of State shall immediately remove the rule or portion of a rule from the collection of effective rules.

d) If a statement is issued under this Section, then, in response to an objection or suggestion of the Joint Committee, the agency may propose changes to the rule, amendment, or repealer or portion of a rule, amendment, or repealer. If the agency proposes changes, it must provide additional notice to the Joint Committee under the same terms and conditions and shall be subject to the same requirements and limitations as those set forth for a second notice period under subsection (c) of Section 5-40.

**Section 5-130 Periodic review of existing rules**

a) The Joint Committee shall evaluate the rules of each agency at least once every 5 years. The Joint Committee by rule shall develop a schedule for this periodic evaluation. In developing this schedule the Joint Committee shall group rules by specified areas to assure the evaluation of similar rules at the same time. The schedule shall include at least the following categories:

1) Human resources.
2) Law enforcement.
3) Energy.
4) Environment.
5) Natural resources.
6) Transportation.
7) Public utilities.
8) Consumer protection.
9) Licensing laws.
10) Regulation of occupations.
11) Labor laws.
12) Business regulation.
13) Financial institutions.
14) Government purchasing.

b) When evaluating rules under this Section, the Joint Committee's review shall include an examination of the following:

1) Organizational, structural, and procedural reforms that affect rules or rulemaking.

2) Merger, modification, establishment, or abolition of regulations.
3) Eliminating or phasing out outdated, overlapping, or conflicting regulatory jurisdictions or requirements of general applicability.
4) Economic and budgetary effects.

**Section 5-135 Administration of Act**

The Joint Committee may adopt rules to administer the provisions of this Act relating to the Joint Committee's responsibilities, powers, and duties under this Article 5.

**Section 5-140 Reports to the General Assembly**

The Joint Committee shall report its findings, conclusions, and recommendations, including suggested legislation, to the General Assembly by February 1 of each year.

The requirement for reporting to the General Assembly shall be satisfied by filing copies of the report with the Speaker, the Minority Leader, and the Clerk of the House of Representatives, the President, the Minority Leader, and the Secretary of the Senate, and the Legislative Research Unit, as required by Section 3.1 of the General Assembly Organization Act, and filing additional copies with the State Government Report Distribution Center for the General Assembly as required under paragraph (t) of Section 7 of the State Library Act.

**Section 5-145 Request for adoption of rules**

a) An agency shall, in accordance with Section 5-35, adopt rules that implement recently enacted legislation of the General Assembly in a timely and expeditious manner.
b) Any interested person may request an agency to adopt, amend, or repeal a rule. Each agency shall prescribe by rule the procedure for consideration and disposition of the person's request. If, within 30 days after submission of a request, the agency has not initiated rulemaking proceedings in accordance with Section 5-35, the request shall be deemed to have been denied.

**Section 5-150 Declaratory rulings**

a) Requests for rulings. Each agency may in its discretion provide by rule for the filing and prompt disposition of petitions or requests for declaratory rulings as to the applicability to the person presenting the petition or request of any statutory provision enforced by the agency or of any rule of the agency. Declaratory rulings shall not be appealable. The agency shall maintain as a public record in the agency's principal office and make available for public inspection and copying any such rulings. The agency shall delete trade secrets or other confidential information from the ruling before making it available.
b) Overlapping regulations.

1) Any persons subject to a rule imposed by a State agency and to a similar rule imposed by the federal government may petition the agency administering the State rule for a declaratory ruling as to whether compliance with the federal rule will be accepted as compliance with the State rule.

2) If the agency determines that compliance with the federal rule would not satisfy the purposes or relevant provisions of the State law involved, the agency shall so inform the petitioner in writing, stating the reasons for the determination, and may issue a declaratory ruling to that effect.

3) If the agency determines that compliance with the federal rule would satisfy the purposes and relevant provisions of the State law involved but that it would not satisfy the relevant provisions of the State rule involved, the agency shall so inform the petitioner and the Joint Committee on Administrative Rules, and the agency may initiate a rulemaking proceeding in accordance with Section 5-35 to consider revising the rule to accept compliance with the federal rule in a manner that is consistent with the purposes and relevant provisions of the State law.

4) If the agency determines that compliance with the federal rule would satisfy the purposes and relevant provisions of the State law and the State rule involved, the agency shall issue a declaratory ruling indicating its intention to accept compliance with the federal rule as compliance with the State rule and the terms and conditions under which it intends to do so.

**Section 5-155 References to this Act**

After the effective date of this amendatory Act of 1991, when rules contain references to Sections of this Act as they were numbered before the effective date of this amendatory Act of 1991, agencies shall within one year amend those rules to change the references to the Section numbers created by this amendatory Act of 1991. The amendment may be adopted by filing with the Secretary of State for publication in the Illinois Register a notice that lists the precise regulatory citations of the obsolete statutory references that are being revised and the new citation for each. Upon filing a notice, the agency shall also certify to the Secretary of State a copy of each rule that contains an amended citation for the Illinois Administrative Code. All such certified rules shall be adopted and effective immediately upon filing.

**Section 5-160 Certain provisions of the Illinois Public Aid Code control over provisions of this Act**

In the event that any provisions of this Act are in conflict with the provisions of Section 4-2 of the Illinois Public Aid Code, the provisions of Section 4-2 of the Illinois Public Aid Code shall control.

**Section 5-165 Ex parte communications in rulemaking; special government agents.**

a) Notwithstanding any law to the contrary, this Section applies to ex parte communications made during the rulemaking process.

b) "Ex parte communication" means any written or oral communication by any person during the rulemaking period that imparts or requests material information or makes a material argument regarding potential action concerning an agency's general, emergency, or peremptory rulemaking under this Act and that is communicated to that agency, the head of that agency, or any other employee of that agency. For purposes of this Section, the rulemaking period begins upon the commencement of the first notice period with respect to general rulemaking under Section 5-40, upon the filing of a notice of emergency rulemaking under Section 5-45, or upon the filing of a notice of rulemaking with respect to peremptory rulemaking under Section 5-50. "Ex parte communication" does not include the following: (i) statements by a person publicly made in a public forum; (ii) statements regarding matters of procedure and practice, such as the format of public comments, the number of copies required, the manner of filing such comments, and the status of a rulemaking proceeding; and (iii) statements made by a State employee of that agency to the agency head or other employee of that agency.

c) An ex parte communication received by any agency, agency head, or other agency employee shall immediately be reported to that agency's ethics officer by the recipient of the communication and by any other employee of that agency who responds to the communication. The ethics officer shall require that the ex parte communication promptly be made a part of the record of the rulemaking proceeding. The ethics officer shall promptly file the ex parte communication with the Executive Ethics Commission, including all written communications, all written responses to the communications, and a memorandum prepared by the ethics officer stating the nature and substance of all oral communications, the identity and job title of the person to whom each communication was made, all responses made, the identity and job title of the person making each response, the identity of each person from whom the written or oral ex parte communication was received, the individual or entity represented by that person, any action the person requested or recommended, and any other pertinent information. The disclosure shall also contain the date of any ex parte communication.

d) Failure to take certain actions under this Section ay constitute a violation as provided in Section 5-50 of the State Officials and Employees Ethics Act.

## ARTICLE 10. ADMINISTRATIVE HEARINGS

### Section 10-5 Rules required for hearings

All agencies shall adopt rules establishing procedures for contested case hearings.

### Section 10-10 Components of rules

All agency rules establishing procedures for contested cases shall at a minimum comply with the provisions of this Article 10. In addition, agency rules establishing procedures may include, but

need not be limited to, the following components: pre-hearing conferences, representation interview or deposition procedures, default procedures, selection of administrative law judges, the form of the final order, the standard of proof used, which agency official makes the final decision, representation of parties, subpoena request procedures, discovery and protective order procedures, and any review or appeal process within the agency.

**Section 10-15 Standard of proof**

Unless otherwise provided by law or stated in the agency's rules, the standard of proof in any contested case hearing conducted under this Act by an agency shall be the preponderance of the evidence.

**Section 10-20 Qualifications of administrative law judges**

All agencies shall adopt rules concerning the minimum qualifications of administrative law judges for contested case hearings. The agency head or an attorney licensed to practice law in Illinois may act as an administrative law judge or panel for an agency without adopting any rules under this Section. These rules may be adopted using the procedures in either Section 5-15 or 5-35.

**Section 10-25 Contested cases; notice; hearing**

a) In a contested case, all parties shall be afforded an opportunity for a hearing after reasonable notice. The notice shall be served personally or by certified or registered mail or as otherwise provided by law upon the parties or their agents appointed to receive service of process and shall include the following:
   1) A statement of the time, place, and nature of the hearing.
   2) A statement of the legal authority and jurisdiction under which the hearing is to be held.
   3) A reference to the particular Sections of the substantive and procedural statutes and rules involved.
   4) Except where a more detailed statement is otherwise provided for by law, a short and plain statement of the matters asserted, the consequences of a failure to respond, and the official file or other reference number.
   5) The names and mailing addresses of the administrative law judge, all parties, and all other persons to whom the agency gives notice of the hearing unless otherwise confidential by law.

b) An opportunity shall be afforded all parties to be represented by legal counsel and to respond and present evidence and argument.

c) Unless precluded by law, disposition may be made of any contested case by stipulation, agreed settlement, consent order, or default.

**Section 10-30 Disqualification of administrative law judge**

a) The agency head, one or more members of the agency head, or any other person meeting the qualifications set forth by rule under Section 10-20 may be the administrative law judge.

b) The agency shall provide by rule for disqualification of an administrative law judge for bias or conflict of interest. An adverse ruling, in and of itself, shall not constitute bias or conflict of interest.

**Section 10-35 Record in contested cases**

a) The record in a contested case shall include the following:
   1) All pleadings (including all notices and responses thereto), motions, and rulings.
   2) All evidence received.
   3) A statement of matters officially noticed.
   4) Any offers of proof, objections, and rulings thereon.
   5) Any proposed findings and exceptions.
   6) Any decision, opinion, or report by the administrative law judge.
   7) All staff memoranda or data submitted to the administrative law judge or members of the agency in connection with their consideration of the case that are inconsistent with Section 10-60.
   8) Any communication prohibited by Section 10-60.

   No such communication shall form the basis for any finding of fact.

b) Oral proceedings or any part thereof shall be recorded stenographically or by other means that will adequately insure the preservation of the testimony or oral proceedings and shall be transcribed on the request of any party.

c) Findings of fact shall be based exclusively on the evidence and on matters officially noticed.

**Section 10-40 Rules of evidence; official notice**

In contested cases:

a) Irrelevant, immaterial, or unduly repetitious evidence shall be excluded. The rules of evidence and privilege as applied in civil cases in the circuit courts of this State shall be followed. Evidence not admissible under those rules of evidence may be admitted, however, (except where precluded by statute) if it is of a type commonly relied upon by reasonably prudent men in the conduct of their affairs. Objections to evidentiary offers may be made and shall be noted in the record. Subject to these requirements, when a hearing will be expedited and the interests of the parties will not be prejudiced, any part of the evidence may be received in written form.

b) Subject to the evidentiary requirements of subsection (a) of this Section a party may conduct cross-examination required for a full and fair disclosure of the facts.

c) Notice may be taken of matters of which the circuit courts of this State may take judicial notice. In addition, notice may be taken of generally recognized technical or scientific facts within the agency's specialized knowledge. Parties shall be

notified either before or during the hearing, or by reference in preliminary reports or otherwise, of the material noticed, including any staff memoranda or data, and they shall be afforded an opportunity to contest the material so noticed. The agency's experience, technical competence, and specialized knowledge may be utilized in the evaluation of the evidence.

**Section 10-45 Proposal for decision**

Except where otherwise expressly provided by law, when in a contested case a majority of the officials of the agency who are to render the final decision has not heard the case or read the record, the decision, if adverse to a party to the proceeding other than the agency, shall not be made until a proposal for decision is served upon the parties and an opportunity is afforded to each party adversely affected to file exceptions and to present a brief and, if the agency so permits, oral argument to the agency officials who are to render the decision. The proposal for decision shall contain a statement of the reasons therefor and of each issue of fact or law necessary to the proposed decision and shall be prepared by the persons who conducted the hearing or one who has read the record.

**Section 10-50 Decisions and orders**

a) A final decision or order adverse to a party (other than the agency) in a contested case shall be in writing or stated in the record. A final decision shall include findings of fact and conclusions of law, separately stated. Findings of fact, if set forth in statutory language, shall be accompanied by a concise and explicit statement of the underlying facts supporting the findings. If, in accordance with agency rules, a party submitted proposed findings of fact, the decision shall include a ruling upon each proposed finding. Parties or their agents appointed to receive service of process shall be notified either personally or by registered or certified mail of any decision or order. Upon request a copy of the decision or order shall be delivered or mailed forthwith to each party and to his attorney of record.

b) All agency orders shall specify whether they are final and subject to the Administrative Review Law.

c) A decision by any agency in a contested case under this Act shall be void unless the proceedings are conducted in compliance with the provisions of this Act relating to contested cases, except to the extent those provisions are waived under Section 10-70 and except to the extent the agency has adopted its own rules for contested cases as authorized in Section 1-5.

**Section 10-55 Expenses and attorney's fees**

a) In any contested case initiated by any agency that does not proceed to court for judicial review and on any issue where a court does not have jurisdiction to make an award of litigation expenses under Section 2-611 of the Civil Practice Law, any allegation made by the agency without reasonable cause and found to be

untrue shall subject the agency making the allegation to the payment of the reasonable expenses, including reasonable attorney's fees, actually incurred in defending against that allegation by the party against whom the case was initiated. A claimant may not recover litigation expenses when the parties have executed a settlement agreement that, while not stipulating liability or violation, requires the claimant to take correction action or pay a monetary sum.

b) The claimant shall make a demand for litigation expenses to the agency. If the claimant is dissatisfied because of the agency's failure to make any award or because of the insufficiency of the agency's award, the claimant may petition the Court of Claims for the amount deemed owed. If allowed any recovery by the Court of Claims, the claimant shall also be entitled to reasonable attorney's fees and the reasonable expenses incurred in making a claim for the expenses incurred in the administrative action. The Court of Claims may reduce the amount of the litigation expenses to be awarded under this Section, or deny an award, to the extent that the claimant engaged in conduct during the course of the proceeding that unduly and unreasonably protracted the final resolution of the matter in controversy.

c) In any case in which a party has any administrative rule invalidated by a court for any reason, including but not limited to the agency's exceeding its statutory authority or the agency's failure to follow statutory procedures in the adoption of the rule, the court shall award the party bringing the action the reasonable expenses of the litigation, including reasonable attorney's fees.

**Section 10-60 Ex parte communications**

a) Except in the disposition of matters that agencies are authorized by law to entertain or dispose of on an ex parte basis, agency heads, agency employees, and administrative law judges shall not, after notice of hearing in a contested case or licensing to which the procedures of a contested case apply under this Act, communicate, directly or indirectly, in connection with any issue of fact, with any person or party, or in connection with any other issue with any party or the representative of any party, except upon notice and opportunity for all parties to participate.

b) However, an agency member may communicate with other members of the agency, and an agency member or administrative law judge may have the aid and advice of one or more personal assistants.

c) An ex parte communication received by any agency head, agency employee, or administrative law judge shall be made a part of the record of the pending matter, including all written communications, all written responses to the communications, and a memorandum stating the substance of all oral communications and all responses made and the identity of each person from whom the ex parte communication was received.

d) Communications regarding matters of procedure and practice, such as the format of pleadings, number of copies required, manner of service, and status of proceedings, are not considered ex parte communications under this Section.

**Section 10-65 Licenses**

a) When any licensing is required by law to be preceded by notice and an opportunity for a hearing, the provisions of this Act concerning contested cases shall apply.

b) When a licensee has made timely and sufficient application for the renewal of a license or a new license with reference to any activity of a continuing nature, the existing license shall continue in full force and effect until the final agency decision on the application has been made unless a later date is fixed by order of a reviewing court.

c) Except as provided in Section 1-27 of the Department of Natural Resources Act, an application for the renewal of a license or a new license shall include the applicant's social security number. Each agency shall require the licensee to certify on the application form, under penalty of perjury, that he or she is not more than 30 days delinquent in complying with a child support order. Every application shall state that failure to so certify shall result in disciplinary action, and that making a false statement may subject the licensee to contempt of court. The agency shall notify each applicant or licensee who acknowledges a delinquency or who, contrary to his or her certification, is found to be delinquent or who after receiving notice, fails to comply with a subpoena or warrant relating to a paternity or a child support proceeding, that the agency intends to take disciplinary action. Accordingly, the agency shall provide written notice of the facts or conduct upon which the agency will rely to support its proposed action and the applicant or licensee shall be given an opportunity for a hearing in accordance with the provisions of the Act concerning contested cases. Any delinquency in complying with a child support order can be remedied by arranging for payment of past due and current support. Any failure to comply with a subpoena or warrant relating to a paternity or child support proceeding can be remedied by complying with the subpoena or warrant. Upon a final finding of delinquency or failure to comply with a subpoena or warrant, the agency shall suspend, revoke, or refuse to issue or renew the license. In cases in which the Department of Public Aid has previously determined that an applicant or a licensee is more than 30 days delinquent in the payment of child support and has subsequently certified the delinquency to the licensing agency, and in cases in which a court has previously determined that an applicant or licensee has been in violation of the Non-Support Punishment Act for more than 60 days, the licensing agency shall refuse to issue or renew or shall revoke or suspend that person's license based solely upon the certification of delinquency made by the Department of Public Aid or the certification of violation made by the court. Further process, hearings, or redetermination of the delinquency or violation by the licensing agency shall not be required. The licensing agency may issue or renew a license if the licensee has arranged for payment of past and current child support obligations in a manner satisfactory to the Department of Public Aid or

the court. The licensing agency may impose conditions, restrictions, or disciplinary action upon that license.

d) Except as provided in subsection (c), no agency shall revoke, suspend, annul, withdraw, amend materially, or refuse to renew any valid license without first giving written notice to the licensee of the facts or conduct upon which the agency will rely to support its proposed action and an opportunity for a hearing in accordance with the provisions of this Act concerning contested cases. At the hearing, the licensee shall have the right to show compliance with all lawful requirements for the retention, continuation, or renewal of the license. If, however, the agency finds that the public interest, safety, or welfare imperatively requires emergency action, and if the agency incorporates a finding to that effect in its order, summary suspension of a license may be ordered pending proceedings for revocation or other action. Those proceedings shall be promptly instituted and determined.

e) Any application for renewal of a license that contains required and relevant information, data, material, or circumstances that were not contained in an application for the existing license shall be subject to the provisions of subsection (a).

**Section 10-70 Waiver**

Compliance with any or all of the provisions of this Act concerning contested cases may be waived by written stipulation of all parties.

## ARTICLE 15. SEVERABILITY AND EFFECTIVE DATE

**Section 15-5 Severability**

If any provision of this Act or the application of any provision of this Act to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the Act that can be given effect without the invalid provision or application, and for this purpose the provisions of this Act are severable.

**Section 15-10 Effective date**

This Act takes effect upon becoming law.

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